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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1930

No. 368

THE SUSQUEHANNA POWER COMPANY,
APPELLANT,

vs.

STATE TAX COMMISSION OF MARYLAND

APPEAL FROM THE COURT OF APPEALS OF THE STATE OF MARYLAND

FILED AUGUST 21, 1930

(35,290)

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SUPREME COURT OF THE UNITED STATES

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[fol. a-4] **IN CIRCUIT COURT OF HARFORD COUNTY**

Appeal of THE SUSQUEHANNA POWER COMPANY from Decision of the State Tax Commission of Maryland in the Matter of the Assessment for Taxation of the Real Estate and Property of said Company Located in Harford County, Maryland

PETITION AND ORDER THEREON—Filed Nov. 7, 1929

To the Honorable the Judges of said Court:

The Petition of The Susquehanna Power Company, a corporation under the laws of Maryland, respectfully shows:

I

That your petitioner is a corporation duly organized and formed under the laws of Maryland. In pursuance of the powers conferred upon it by the Maryland Act of 1908, [fol. 5] Chapter 268 and otherwise, and under similar power and authority conferred upon it by the State of Pennsylvania, and, especially in pursuance of a franchise conferred upon it by license of the Federal Power Commission authorizing and empowering it to develop a water power upon the Susquehanna River (under the designation of Project No. 405), your petitioner has constructed a dam and water power on the Susquehanna River, about 8 miles above Havre de Grace, said development consisting principally of the dam across the river, located partly in Harford and partly in Cecil Counties and the power house and machinery thereof located at said dam in Harford County, and an extensive pool covering about 9,100 acres formed by the damming of said river and extending up into the adjacent State of Pennsylvania, of which about 5,900 acres are in Pennsylvania and 3,200 acres in Harford and Cecil Counties, Maryland.

II

That in the year 1928 the County Commissioners of Harford County, in assessing for State and County taxation for the year 1929 and subsequent years, the real estate and

property of your petitioner, located in Harford County, after having heard your petitioner on said matter, proceeded to assess all such real estate and property, including said dam, power house and the land owned by your petitioner in said county which formed part of the bed of said pool; and assessed such part of your petitioner's real estate and property as was located in the Fifth Election District of Harford County at the sum of $18,872,353; including in said assessment the item of 2,110 acres of submerged lands and rights therein which the County Commissioners valued and assessed at the sum of $6,620,786.

III

That your petitioner, deeming that said assessment was excessive and had been made upon erroneous, illegal principles, appealed from such assessment to the State Tax Commission of Maryland. Your petitioner's said appeal came on for hearing before the State Tax Commission of Maryland and was heard upon the record of the proceed- [fol. 6] ings and the evidence adduced at such hearing. And by order passed on October 11th, 1929, the State Tax Commission reversed the action of the County Commissioners of Harford County in so assessing such property of your petitioner and reassessed the same at different amounts. In such reassessment the State Tax Commission valued and assessed such part of the submerged land forming the new bed of the Susquehanna River as is located in Harford County, described as "2,110 acres (more or less) submerged land," which said Commission assessed to your petitioner at the value of $2,349,300, as will appear from a copy of said order filed herewith as part hereof and marked Exhibit A.

IV

That such assessment of said "submerged lands" or land forming part of the bed of said Susquehanna River and flowage rights therein at said figure, is illegal and erroneous for the following reasons:

(a) Because said submerged land, and any rights of your petitioner therein, constitute an essential or integral part of its "complete unit" and "project area" or of the pool to

be formed by it on the Susquehanna River under the terms of the license from the Federal Power Commission above mentioned, and the same are exempt from assessment and taxation for State and County purposes, because in constructing, maintaining and operating the same under said license your petitioner is acting as an agency or instrumentality of the Federal Government for the promotion of navigation and development of the navigable capacity of the water power of said river, and the taxing by the State of Maryland or by said county of such part of its property will operate to defeat the objects and purposes of said license and the rights reserved to the United States thereunder.

(b) Because in so valuing and assessing said submerged land, at such excessive rate, the Tax Commission of Maryland arrived at such excessive valuation in an erroneous and illegal way, by including in such valuation the value of your petitioner's franchises (Federal or State) and also by including in such valuation elements of value which belong [fol. 7] to your petitioner's property outside of Harford County and outside of the State of Maryland, thereby arriving at an excessive valuation or assessment for the submerged land owned by your petitioner which is now located in and a part of the bed of such pool, formed by the waters in the Susquehanna River.

(c) Because in so valuing and assessing submerged land owned by your petitioner, which were at the time of the said assessment and are now a part of the bed of the Susquehanna River, the State Tax Commission of Maryland included in said assessment, to give it such value, the waters of the Susquehanna River, which waters at the time of the said assessment were not the property of your petitioner and were not subject to taxation by the State of Maryland.

(d) Because said Commission at said hearing refused to grant the rulings on legal points or prayers submitted by your petitioner at said hearing, as authorized by law, and numbered 3, 4, 5, 7, 8 and 9 (a copy of which said prayers and the rulings thereon is attached to this petition as part thereof and marked Exhibits B and C), and refused to followed the legal principles laid down in said

prayers or requests and arrived at said valuation or assessment in disregard thereof.

(e) And for other errors of law apparent on the record of said proceedings:

Your petitioner therefore prays that a summons may issue to the State Tax Commission of Maryland (consisting of the three commissioners: the Honorable Messrs. Jesse D. Price, Edward O. Weant and Oscar Leser, their office being located in Baltimore City, Maryland,) and to the County Commissioners of Harford County; such summons to the State Tax Commission to be in the form of a subpœna duces tecum requiring them to bring or produce in this Court upon the hearing of this appeal the record of the aforesaid proceedings before said Commission; and that such appeal may be heard by this Honorable Court upon a day to be designated by it, and that the action of the State Tax Commission in so valuing and assessing said "submerged lands" and flowage rights therein may be re-
[fol. 8] versed and set aside, and your petitioner have such other and further relief as may be proper and appropriate in the premises.

And your petitioner, etc.

Charles McH. Howard, S. A. & F. R. Williams, Attorneys for Appellant.

Duly acknowledged before Lucille Gray, a Notary Public in and for Harford County, Maryland, November 7, 1929.

Order

Ordered this 7th day of November, 1929, by the Circuit Court for Harford County, upon the aforegoing petition of appeal of The Susquehanna Power Company, from decision of the State Tax Commission of Maryland, in the matter of the assessment for taxation of the real estate and property of said company, located in Harford County, Maryland, that summons be issued as prayed, and that the hearing of said appeal be and the same is hereby set for November 26th, 1929.

Walter W. Preston.

EXHIBIT "A" TO PETITION

Order of Commission

Ordered, by the State Tax Commission of Maryland, this 11th day of October, 1929, that the action of the County Commissioners of Harford County in assessing the property described in this appeal is hereby reversed, and property assessed as follows:

[fol. 9]

Fifth District	
Transmission system	$94,800.
Railroad, 3.16 miles at $5,000 per mile	15,800.
Water towers	4,500.
2 Dwelling houses	19,000.
3.58 acres of Islands at $50. per acre	179.
569.81 Rocky hillside land at $20. per acre	11,396.
888.67 Acres woodland at $30. per acre	26,460.
690.77 Acres tillable land at $50. per acre	34,538.
Buildings	15,840.
2,110 Acres (more or less) submerged land	2,349,300.
Power house and portion of dam located in Harford County	9,413,350.
Second District	
114.99 Acres land and buildings	3,650.
3.35 Miles railroad at $5,000 per mile	16,750.
Sixth District	
64.47 Acres land and buildings, less 48.7 acres of land, used by railroad	10,770.
Railroad warehouse	750.
1.31 Miles railroad at $5,000 per mile	6,550.
Total	$12,023,633.

(Signed) Jesse D. Price, (Signed) Edward O. Weant, (Signed) Oscar Leser, Commissioners.

True Copy. Test: (Signed) Thomas A. Murray, Jr., Secretary.

NOTE RE EXHIBITS "B" AND "C" TO PETITION

Exhibit B, filed Nov. 7, 1929, and Exhibit C, filed Nov. 7, 1929, being respectively the requests for rulings by the State Tax Commission and the rulings thereon made by said Commission, appear in the Record after Exhibit No. 5.

[fol. 10] BEFORE STATE TAX COMMISSION OF MARYLAND

THE SUSQUEHANNA POWER COMPANY

vs.

COUNTY COMMISSIONERS OF HARFORD COUNTY

PETITION AND APPEAL

The petition and appeal of The Susquehanna Power Company, a corporation duly chartered under the laws of Maryland, respectfully shows:

I

That for the year 1929, the said County Commissioners of Harford County entered the following assessments against the property, rights and franchises of your petitioners, that is to say:

Fifth Election District of Harford County

Electrical transmission system in Harford County, exclusive of Delta line		$109,293.
Transmission line Delta Conowingo Dam,		
4.16 Miles wire at $40.00	$166.00	
117 Poles at $6.25	1,043.00	
2 Towers at $100.00	200.00	
		1,409.
Portion of dam located in Harford County and power house		12,003,156.
Railroad:		
3.16 Miles at $5,000	$15,800.00	
132.37 Acres of land	10,000.00	
		25,800.

Water towers	4,500.
2 Dwelling houses	19,000.
Islands, 3.58 acres at $50.00	175.
Rocky hillside, 569.81 acres at $20.00	11,396.
Wooded land, 882.67 acres at $30.00	26,460.
Tillable land, 690.77 acres at $50.00	34,538.
Buildings	15,840.
Submerged lands, 2,110 acres and rights therein	6,620,786.
Total	$18,872,253.

[fol. 11] Second Election District of Harford County

Real estate and buildings—114.99 acres	$3,650.
3.35 Miles railroad at $5,000	16,750.
Total	$20,400.

Sixth Election District of Harford County

64.47 Acres and buildings, less 48.7 acres used by railroad	$10,770.
1.31 Mile railroad at $5,000	6,550.
Total	$18,070.

And in so doing greatly increased the assessment theretofore existing on the lands, property and right of your petitioner.

And, also refused to grant a sufficient reduction from an assessment heretofore existing on certain property of said company, that is to say,—upon the railroad siding hereinafter mentioned, and from its orders in so doing your petitioner immediately entered appeals with the clerk of the said board, and now confirms the said appeals to your Honorable Body.

II

That the property and rights so assessed as aforesaid are located within the limits of Harford County in and bordering upon the Susquehanna River, between the State line commonly known as Mason and Dixon's Line on the north, and the City of Havre de Grace on the south, in-

cluding property within said city, all lying within Election Districts Nos. 5, 2 and 6.

III

That the buildings and structures of your petitioner in the said river, on the said lands, and in the said city, consist of a dam, power house, pool, railway and power transmission lines, as well as certain offices and dwellings located in and about the said dam.

[fol. 12] (a) That the said dam is located partly in Harford County and partly in Cecil County.

(b) That the said power house consisting of structure and machinery is located entirely within the limits of Harford County.

(c) That the said pool is located partly in Maryland within the limits of Harford and Cecil Counties, and partly in the State of Pennsylvania within the limits of York and Lancaster Counties.

(d) That the said transmission lines consist of power lines extending southerly from the power house across the river into Cecil County, and also the power transmission lines extending northerly between the dam and the aforesaid State line.

(e) That the said railroad is a siding extending from said dam, southerly through the Fifth District, the Second District and into the Sixth District of said county, connecting the said dam with a siding of the Pennsylvania Railroad Company at Havre de Grace.

(f) Other buildings within the limits of the City of Havre de Grace, one of which is used as a dwelling and another used mainly for warehouse purposes.

IV

The said property and rights are owned by your petitioner, subject to certain State roads which have been conveyed to the State Roads Commission of Maryland by your petitioner, and subject to the rights of the State of Maryland to use and maintain a roadway or bridge above the said dam structure, as will more fully appear from a lease to

the said State which will be produced when, and as required by the Commission.

V

The said assessment that was first made on the 4th day of October, 1928, was subsequently amended on the 9th day of October, in said year, and other assessments were [fol. 13] made on October 22, in said year, as will appear by a copy of letters from the said Commissioners to the said Power Company, under said last named date, and the refusal to sufficiently reduce the assessment of said railway siding was made on the said 9th day of October, 1928.

VI

Your petitioner therefore alleges, in support of said appeal, the following reasons therefor:

First. The description of the property and rights of your petitioner, assessed as aforesaid is too vague, indefinite and general, that is to say—there is not indicated the extent of the lands conveyed by your petitioner to the State Roads Commission, upon which such State roads were built by your petitioner, nor is there any indication of the portion of said dam so assessed occupied by the State as a bridge over said river, and leased by your petitioner to the State, nor is there sufficient separation of the transmission lines owned by your petitioner, nor of the character of the rights and easements assessed to your petitioner, so that your petitioner may protect itself against duplicate assessment and taxation.

Second. "Submerged land and rights therein" is a description too vague, indefinite and general. It does not enable the Power Company to distinguish between the lands in the bed of the river and lands which were not submerged before the pool was formed, nor is it possible for the Power Company to determine from said description what rights are assessed so that they may distinguish between rights used and rights not used, nor is the Power Company advised just what the use of the word "rights" in said description is intended to cover:

(a) It includes the roadway over the dam leased to the State, which is exempt from taxation.

(b) It includes the machinery in said power house, of which there is a large and considerable amount which said machinery is not assessable by the said County Commissioners; the same being tangible personal property.

[fol. 14] (c) Your petitioner cannot, from said description ascertain or locate with reasonable certainty how its said property is assessed.

Fourth. A portion of your petitioner's lands were conveyed to the State Roads Commission for road purposes, and together therewith there was conveyed lands for parking spaces required by the State Roads Commission. The description should show that the lands for said roads and parking spaces are excluded from the assessments.

Fifth. The land designated as submerged land and rights in the assessment should distinguish between lands, which, before the construction of the dam, were subject to flood by the waters of the river, and those which are only submerged because of the creation of the pool as back water from the dam, so as to enable the determination of its reasonable valuation for the purpose of taxation.

Sixth. The said assessment violates the provisions of law, in that the assessment or classification is illegal—

(a) By reason of over-valuation.

(b) Because it is unequal, in that said assessment has been made by a higher proportion of valuation than other real property, on the same tax roll and by the said officers.

(c) And that your petitioner will be injured by such illegality, inequality and erroneous assessment and classification.

(d) The said assessment is not uniform as to land and rights within the limits of the Fifth Election District of said county.

(e) And is not uniform as to land and rights within the Second Election District of said county.

(f) It is not uniform as to lands and rights within the Sixth Election District of Harford County.

[fol. 15] (g) The same is not uniform as regards the same class of property within the taxing district of Harford County.

(h) The same is not uniform as regards the same class of property within contiguous and other jurisdictions of the State of Maryland.

(i) That the values fixed by said assessment are over-valuations compared with the values of other lands and rights within the same county, and within the adjoining and other counties of said State.

Seventh. That the said assessment violates the principles of existing law, in that it covers property which the County Commissioners are not entitled to value for taxation, that is to say,—property which, if assessable can only be assessed by the State Tax Commission.

Eighth. And, therefore, for the reasons aforesaid, your petitioner says:

1. The proposed assessment is excessive, unreasonable and unlawful.

2. The values fixed by said assessment are unsound in principle and arbitrary.

3. The said assessment violates the provisions of law requiring assessments to be uniform.

4. The said assessment seeks to value for taxation, property of the company, which it is beyond the province of Harford County to so value, or to levy an assessment of taxes upon.

5. The said assessment disregards the "fair sale value" of the property assessed.

VII

Your petitioner, therefore, offers ready to support its said appeal by evidence, tending to prove the allegations [fol. 16] of said petition and prays that it may be permitted so to do.

The Susquehanna Power Company, by W. H. Taylor.
S. A. and F. R. Williams, Charles McHenry Howard, Attorneys for the Susquehanna Power Co.

Address of Petitioner: Bel Air, Harford County, Maryland.

Duly sworn to by W. H. Taylor. Jurat omitted in printing.

EXHIBIT A TO PETITION AND APPEAL

(Page 1)

The Susquehanna Power Company

Land, Buildings and Structures in Second, Fifth and Sixth Election Districts, Harford County

[fol. 17] Land—4,723.16 acres as shown by assessment books of Harford County Commissioners for year 1929 (corrected as to one item only, viz: "Submerged Lands, 2,110 acres and rights therein"). For details see page 2		$136,709
Buildings and Structures (Investment as of December 31, 1927):		
Dam and Reservoir	$1,083,062	
Regulation Gates and Appurtenances	167,390	
Power House	6,293,305	
Railroad to Havre de Grace	350,963	
Transmission Line	80,184	
		7,974,904
Total		$8,111,613
The assessment appealed from carries the above at a total assessed figure of		$18,990,053

(Page 2)

The Susquehanna Power Company

Harford County Land Assessment, Year 1929

(Corrected as to One Item Only, viz. "Submerged Lands 2,110 Acres and 'Right' Therein")

Second District

203	Acres, River Bottom at $10	$2,030	
114.99	Acres, Railroad right-of-way and buildings at	3,650	
317.99	Acres Total		$5,680

Fifth District

3.58	Acres, Island at $50	$175	
569.81	Acres, Rocky Hillside at $20	11,396	
[fol. 18]			
882.67	Acres, Wooded Land at $30	26,460	
690.77	Acres, Tillable Land at $50	34,538	
2,110.00*	Acres, Bed of River at $10	21,100	
132.37	Acres, Railroad right-ofway at	10,000	
	Miscellaneous Buildings Acquired with Land at	15,840	
4,389.20	Acres Total		119,509

*This item in the assessment for the year 1929 reads as follows:

"Submerged Lands 2,110 acres and rights therein, $6,620,786."

In the above table this same item is changed to conform to the assessment for the year 1928 as follows:

"2,110 acres, Bed of River, at $10., $21,100."

From the above it will appear that the 1928 assessment on this item per acre was $10. and the 1929 assessment on this item per acre was $3,138.

Sixth District

15.97	Acres, Land & Buildings at		$10,770	
	Railroad Warehouse		750	
15.97	Acres	Total		11,520
4,723.16	Acres	Total in Harford County		$136,709

EXHIBIT C TO PETITION AND APPEAL

(Page 1)

The Susquehanna Power Company

Land, Buildings and Structures in Second, Fifth and Sixth Election Districts, Harford County

Land—4,723.16 acres as shown by assessment books of Harford County Commissioners for year 1929 (corrected as to one item only, viz: [fol. 19] "Submerged Land, 2,110 acres and rights therein"). For details see page 2		$136,709
Buildings and Structures (Investment as of September 30, 1928):		
Dam and Reservoir	$1,169,894	
Regulation Gates and Appurtenances	180,068	
Power House	6,805,746	
Railroad to Havre de Grace	343,972	
Transmission Lines	112,120	
		8,611,800
Total		$8,748,509.
The assessment appealed from carries the above at a total assessed figure of		$18,990,053

(Page 2)

The Susquehanna Power Company

Harford County Land Assessment Year 1929

(Corrected as to one item only, viz., "Submerged Lands 2,110 Acres and 'Rights' Therein")

Second District

203 Acres, River Bottom at $10		$2,030	
114.99 Acres, Railroad right-of-way and buildings at		3,650	
317.99 Acres	Total		$5,680

Fifth District

3.58 Acres, Island at $50		$ 175	
569.81 Acres, Rocky Hillside at $20		11,396	
882.67 Acres, Wooded Land at $30		11,396	
690.77 Acres, Tillable Land at $50		34,538	
[fol. 20]			
2,110.00* Acres, Bed of River at $10		21,100	
132.37 Acres, Railroad right-of-way at		10,000	
Miscellaneous Buildings Acquired with Land at		15,840	
4,389.20 Acres	Total		119,509

*This item in the assessment for the year 1929 reads as follows:

"Submerged Lands, 2,110 acres and rights therein, $6,620,786."

In the above table this same item is changed to conform to the assessment for the year 1928 as follows:

"2,110 acres, Bed of River, at $10., $21,100."

From the above it will appear that the 1928 assessment on this item per acre was $10. and the 1929 assessment on this item per acre was $3,138.

Sixth District

15.97 Acres,	Land & Buildings at	$10,770	
	Railroad Warehouse	750	
15.97 Acres	Total		11,520
4,723.16 Acres	Total in Harford County		$136,709

Résumé of Assessment Susquehanna Power Company in Harford County

Fifth District of Harford County	$18,872,353
Sixth District of Harford County	18,070
Second District of Harford County	22,430
Grand Total	$18,912,853

The above list does not include the 14 cottages now in course of construction, nor the old Hospital Building which is not now assessed, but which we understand has been converted to other uses, nor does it include that building heretofore assessed as an Electric Warehouse at $2,250.00.

[fol. 21] County Commissioners of Harford County

September 25, 1928.

Susquehanna Power Company, 1000 Chestnut Street, Philadelphia, Pa.; Mr. S. A. Williams, Bel Air, Md.:

The County Commissioners are required by law to reassess the real estate in Harford County. You are hereby notified that on the 4th day of October, 1928, you will be given an opportunity to be heard and present testimony before the County Commissioners at their office in the Court House in the Town of Bel Air as to the valuation of the real estate owned by you and situated in the Fifth District of said County, described as follows:

The following valuation of the above named real estate has been suggested to the Board:

Electrical Transmission System	$109,293
Submerged Land and Rights	6,622,816
Dam and Power House	12,003,156
Total	$18,735,265

If this assessment is satisfactory you need not appear before the County Commissioners.

Upon the expiration of the date above set for the hearing, the County Commissioners will assess your real estate according to their best judgment.

County Commissioners of Harford County, by J. M. Bosley, Clerk.

(NOTE.—Article 81, Section 204, Bagby's Code. Five clear days' notice in writing must be given to the owner of the property to be assessed, and if such owner be not found within the limits of the County, then to the person in possession of the property to be assessed or in whose custody the same may be, or if it be land and no one be in the apparent occupancy thereof, then by a notice posted on said land.)

[fol. 22] Proceedings of the County Commissioners

Bel Air, Maryland, September 25, 1928.

The Board sat for the purpose of making transfers and abatements.

All members present.

The above minutes approved:

J. R. Phillips, Pres't.

On October 8, 1928, it was moved, seconded and carried that the minutes of September 25th, 1928, be reopened to correct the same by inserting the following:

That notice be sent to The Susquehanna Power Company and Mr. Stevenson A. Williams, Attorney, that the County Commissioners have placed the following assessment, to wit:

Electrical transmission system	$109,293
Land submerged and rights	6,622,816
Buildings (dam and power house)	12,003,156
Total	$18,735,265

And that October 4th, 1928, is the date set for The Susquehanna Power Company to be present to be heard and

to present testimony before the County Commissioners as to the value of the real estate owned by them, and this notice was sent by order of the Board.

Approved. J. R. Phillips, Pres't.

Proceedings of the County Commissioners

Bel Air, Maryland, October 4, 1928.

The Board met in special session at 10 A. M. All member- present.

[fol. 23] Present also on behalf of the County Commissioners was Dr. Gregory, of Johns Hopkins University, and Dr. Fuller of Swarthmore, Penna., Thomas H. Robinson, Robert H. Archer, together with Mr. Charles H. McNabb, Counsel.

On behalf of The Susquehanna Power Company, Mr. S. A. Williams and Mr. George Roux, who appeared pursuant to the notice of assessment sent The Susquehanna Power Company by the County Commissioners of Harford County dated September 25, 1928.

There were also present Mr. Lindsay, of the State Tax Commission, and Mr. Samuel L. Fyle, Supervisor of Assessments of Harford County.

Mr. Williams and Mr. Roux filed objections of The Susquehanna Power Company to the assessment placed by the County Commisisoners, as follows:

BEFORE THE COUNTY COMMISSIONERS OF HARFORD COUNTY

In the Matter of the Assessment of THE SUSQUEHANNA POWER COMPANY

OBJECTIONS TO PROPOSED ASSESSMENT

To the Honorable the said Board of County Commissioners:

The Susquehanna Power Company comes and objects to the proposed assessment of which it has been notified by your letter dated September 25, 1928, that is to say:

Electrical Transmission System	$109,293
Submerged Land and Rights	6,622,816
Dam and Power House Buildings	12,003,156
Making a total of	$18,735,265

and the following reasons:

[fol. 24]

I

The description of the electrical system is too vague, indefinite and general. It does not enable the Power Company to determine what of its transmission lines is included within that item, and what not, so that it may protest itself against duplicate assessment and taxation.

II

Submerged land and rights is a description too vague indefinite and general. It does not enable the Power Company to distinguish between lands in the bed of the river and lands which were not submerged before the Pool was formed, nor is it possible for the Power Company to determine from said description what rights are assessed so that they may distinguish between rights used and rights not used. Moreover the Power Company should be advised just what the use of the word "rights" in said description is intended to cover.

III

The description of the Dam and Power House Building is too vague and too general for the following reasons:

(a) It would seem to include the entire length of the dam, the greater part of which is in Cecil County.

(b) It would seem to include the roadway over the dam belonging to the State, which is exempt from taxation.

(c) The Power Company cannot, from said description, ascertain or locate with reasonable certainty how its property is assessed.

IV

There are State roads through the land of the Power Company. The description should show that those roads are excluded from the assessment.

[fol. 25]

V

The quantity of land designated as submerged land in the assessment should appear sufficiently to enable the de-

termination of its reasonable valuation for the purpose of taxation.

VI

The said assessment violates the provisions of law with reference to uniformity of taxation, in that——

(a) The same is not uniform as to land within the taxing district, namely—The Second Election District of Harford County.

(b) The same is not uniform as to land within the taxing district, namely—The Fifth Election District of Harford County.

(c) The same is not uniform as to land within the taxing district, namely—The Sixth Election District of Harford County.

(d) The same is not uniform as regards the same class of property within your taxing district, namely—Harford County.

(e) The same is not uniform as regards to the same class of property within contiguous and other jurisdictions of the State of Maryland.

VII

The said assessment violates the principles of existing law, in that it covers property which the County Commissioners are not entitled to value for taxation, that is to say, property which, if assessable, can only be assessed by the State Tax Commission.

VIII

And, therefore, for the reasons aforesaid the Power Company says:

[fol. 26] 1. The proposed assessment is excessive, unreasonable and unlawful.

2. The values fixed by said assessment are unsound in principle and arbitrary.

3. The said assessment violates the provisions of law requiring assessments to be uniform.

4. The said assessment seeks to value for taxation property of the county, which it is beyond the province of Harford County to so value.

5. The said assessment disregards the "Fair sale value" of the property assessed.

The Susquehanna Power Company, by George Roux, Agent.

Oct. 4th, 1928.

To which objections the following answer was made:

BEFORE COUNTY COMMISSIONERS OF HARFORD COUNTY

In the Matter of the Assessment of THE SUSQUEHANNA POWER COMPANY

ANSWER TO OBJECTIONS

In answer to the objections filed by the Susquehanna Power Company to the proposed assessment on their property in the Fifth Election District, we herewith submit the items of all that go to make up the assessment on the property of The Susquehanna Power Company in the Fifth Election District of Harford County, as follows:

Electric transmission system in Harford County, exclusive of Delta line		$109,293
[fol. 27] Transmission line, Delta Conowingo Dam:		
4.16 Miles wire at $40	$166	
117 Poles at $6.25	1,043	
2 Towers at $100	200	
		1,409
Portion of dam located in Harford County, and power house		12,003,156
Railroad:		
3.16 Miles at $10,000	$31,600	
132.37 Acres of land	4,500	
		36,100
Water towers		4,500
2 Dwelling houses		19,000
Islands, 3.58 acres at $50.00		175
Rocky hillside, 569.81 acres at $20.00		11,396

Wooded land, 882.67 acres at $30.00	26,460
Tillable land, 690.77 acres at $50.00	34,538
Buildings	15,840
Submerged lands, 2,110 acres, and rights therein	6,620,786
	$18,882,653

This does not include the fourteen cottages now in course of construction, nor the old hospital building which is not now assessed, but which we understand has been converted to other uses.

The assessments in the Second and Sixth Districts will remain the same for the year 1929 as they were in 1928, with the exception of the additional assessment of 203.85 acres of submerged land in the Second District, which has been assessed to the company at $10.00 per acre, amounting to $2,030.00, which has been deducted from the total assessment in the Fifth District.

The assessment on the submerged lands, amounting to 2,110 acres and rights therein includes all the land that was submerged before and is now submerged by the construction of the dam, and is based on figures submitted by The Susquehanna Power Company.

County Commissioners of Harford County, by J. R. Phillips, Pres't.

[fol. 28] BEFORE COUNTY COMMISSIONERS

MINUTE ENTRY OF REDUCTION IN ASSESSMENT

Mr. Williams, on behalf of The Susquehanna Power Company, filed a request for a reduction in the assessment on the railroad belonging to The Susquehanna Power Company in Harford County, and after consideration it was moved, seconded and unanimously carried by the board that the valuation on the railroad be reduced from $10,000 per mile to $5,000 per mile.

The above minutes approved. J. R. Phillips, President.

Bel Air, Maryland, Oct. 8, 1928.

Proceedings of the County Commissioners

Present: J. R. Phillips, A. H. Wilson, C. C. Spencer, W. E. Somerville and F. C. Whaling.

In reading over the minutes of the meeting of Oct. 4, 1928, it was found that the "answer" of the County Commissioners to the "Objections" of The Susquehanna Power Company contained a typographical error in the assessment under the sub-title "Railroad," and to correct this error the following letter was addressed to Susquehanna Power Company in care of Mr. S. A. Williams, Bel Air, Maryland:

"In reading the minutes of the County Commissioners today, we find in the answer to objections filed by the Susquehanna Power Company on last Thursday, October 4th, a typographical error which we have corrected and desire to call your attention to the same, to wit:

In the 17th line under the sub-title "Railroad" 132.37 acres of land was put down as assessed at $4,500, the sum $4,500 being an error, and should read $10,000, and this is an item that was on the books last year and is not a new [fol. 29] item, so that the total for the railroads of the Susquehanna Power Company in the Fifth District after granting you an abatement of 50% on the miles of track, will be $25,800.00.

We are calling your attention to this so that you will be aware of it immediately, and we are sending you a corrected copy of the assessment in the Fifth District which was a part of the answer given you last Thursday, showing the above correction and the abatement of $5,000 a mile on the 3.16 miles of railroad."

Corrected Copy of Assessment of the Susquehanna Power Company Properties in the Fifth District of Harford County, Maryland

Electric transmission system in Harford County exclusive of Delta line		$109,293
Transmission line, Delta Conowingo Dam:		
4.16 Miles wire at $40.00	$166	
117 Poles at $6.25	1,043	
2 Towers at $100	200	
		1,409

Portion of dam located in Harford County and power house		12,003,156
Railroad:		
3.16 Miles at $5,000	$15,800	
132.37 Acres of land	10,000	
		25,800
Water towers		4,500
2 Dwelling houses		19,000
Islands, 3.58 acres at $50.00		175
Rocky hillside, 569.81 acres at $20.00		11,396
Wooded land, 882.67 acres at $30.00		26,460
Tillable land, 690.77 acres at $50.00		34,538
Buildings		15,840
Submerged lands, 2,110 acres, and rights therein		6,620,786
Total		$18,872,353

[fol. 30] Subsequent to the adjournment of the County Commissioners on October 4, 1928, the following appeal was filed on behalf of The Susquehanna Power Company:

BEFORE COUNTY COMMISSIONERS OF HARFORD COUNTY

In the Matter of the Assessment of THE SUSQUEHANNA POWER COMPANY

NOTE OF APPEAL TO STATE TAX COMMISSION

Mr. J. M. Bosley, Clerk:

Please enter an appeal to the State Tax Commission from the assessment of The Susquehanna Power Company properties made this day by the County Commissioners of Harford County.

(Signed) Susquehanna Power Company, by S. A. Williams, Attorney for the Susquehanna Power Company.

October 4th, 1928.

TENTATIVE ASSESSMENT MADE IN 1927 FOR THE LEVY MADE OCTOBER, 1927, FOR THE YEAR 1928

Real Estate

Temporary buildings	$49,065	
Miscellaneous, small buildings	8,335	
Bunk houses	76,500	
30 two-room houses	14,800	
Mess halls	31,650	
1 two-story dormitory	6,200	
10 four-room houses	11,640	
12 five-room houses	16,200	
1 commissary store	6,200	
Hospital ($12,500) exempt.		
3 five-room houses	3,600	
[fol. 31] Electrical warehouse	2,500	
		$226,790
Depreciation, 10% off		22,679
		$204,111
4.16 Miles railroad	31,600	
132.37 Acres	10,000	
		41,600
Transmission line, Delta Conowingo Dam:		
4.16 Miles wire at $40 per mile	$116	
117 Poles at $6.25 per hole	1,043	
2 Towers at $100 each	200	
		1,409
Permanent structures:		
Water towers		4,500
2 Dwelling houses		19,000
* Bed of river, 2,310 acres at $10.	$21,000	
Islands, 3.58 acres at $50	175	
Rocky hillside, 569.81 acres at $20	11,396	
Wooded land, 888.67 acres at $30.	26,460	
Tillable land, 690.77 acres at $50.	34,538	
Buildings	15,840	
		109,509

*Original copy shows 2,310 acres—this is evidently an error at $10 an acre.

Cost of Power Plant structure:		
954 feet long	$4,605,095	
Deduction for Highway	95,465	
	$4,509,630	
Less	409,630	
		4,100,000
Cost of Dam as lies in Harford Co.:		
668 feet	$1,105,310	
Deduction for Bridge	74,500	
	$1,030,810	
Less	130,810	
		900,000
Total		$5,380,129

[fol. 32] Personal Property

Miscellaneous construction equipment:		
Locomotives, cranes, etc	$12,400	
Standard gauge locomotives	36,000	
Steam shovels	29,000	
	$77,400	
50% off	38,700	
		$38,700
Stone crushing plant, conveyor and concrete mixing plant		33,250
Office furniture and fixtures	$6,300	
Commissary equipment	27,900	
Commissary stock	8,000	
Tools and machinery, 50%	3,750	
		45,950
Total		$117,900

Machinery and Equipment in Power Plant now being installed, $7,877,370.

Automobiles, $3,896 (this item was abated).

Real Estate	$5,380,129
Personal	117,900
Total	$5,498,029

SUSQUEHANNA POWER COMPANY ASSESSMENT IN FIFTH DISTRICT FOR THE LEVY OF 1928 AND THE FOLLOWING YEARS UNTIL THE NEXT GENERAL ASSESSMENT

Electric transmission system in Harford County exclusive of Delta line		$109,293
Transmission line, Delta Conowingo Dam:		
4.16 Miles wire at $40.00	$166	
117 Poles at $6.25	1,043	
2 Towers at $100	200	
		1,409
[fol. 33] Portion of dam located in Harford County and power house		12,003,156
Railroad:		
3.16 Miles at $5,000	$15,800	
132.37 Acres of land	10,000	
		25,800
Water towers		4,500
2 Dwelling houses		19,000
Islands, 3.58 acres at $50.00		175
Rocky hillside, 569.81 acres at $20.00		11,396
Wooded land, 882.67 acres at $30.00		26,460
Tillable land, 690.77 acres at $50.00		34,538
Buildings		15,840
Submerged lands, 2,110 acres, and rights therein.		6,620,786
Total		$18,872,353

Susquehanna Power Company Assessment in Sixth District

64.67 Acres and buildings, less 48.7 acres used by railroad	$10,770	
1.31 Miles railroad at $10,000 per mile	13,100	
Railroad warehouse	750	
		$24,620
10-10-28 abate 50% on R. R		6,550
		$18,070

Susquehanna Power Company Assessment in Second District

Tract of land in Second District containing real estate and buildings, 114.99 acres	$3,650	
3.35 Miles railroad at $10,000 per mile	33,500	
		$37,150
10-10-28 abate on R. R. 50%		16,750
		$20,400
203 Acres of river bottom at $10.00 per acre		2,030
		$22,430

[fol. 34] Summary:

Fifth District	$18,872,353
Sixth District	18,070
Second District	22,430
Grand Total	$18,912,853

BEFORE COUNTY COMMISSIONERS OF HARFORD COUNTY

CLERK'S CERTIFICATE

STATE OF MARYLAND,
Harford County:

I Hereby Certify that the aforegoing is a true and correct copy of the following, to wit:

1. Notice of assessment sent to The Susquehanna Power Company and to Mr. Stevenson A. Williams, attorney, on September 25, 1928.

2. Minutes of the County Commissioners of Harford County of September 25, 1928.

3. Minutes of the County Commissioners of Harford County of October 4, 1928.

4. The objections to the assessment of the County Commissioners filed by the Susquehanna Power Company on October 4, 1928.

5. The answer of the County Commissioners to the objections filed by The Susquehanna Power Company, on October 4, 1928.

6. The minutes of the County Commissioners of Harford County of October 8, 1928.

7. A copy of the corrected assessment of The Susquehanna Power Company in the Fifth District of Harford County.

8. A copy of the notice of appeal on behalf of The Susquehanna Power Company.

[fols. 35-54] 9. A copy of the tentative assessment of The Susquehanna Power Company made in October, 1927, for the year 1928.

10. A copy of The Susquehanna Power Company assessment in the Fifth District of Harford County for the levy of 1928 and the following years until the next general assessment.

11. A copy of The Susquehanna Power Company assessment in the Sixth District of Harford County.

12. A copy of The Susquehanna Power Company assessment in the Second District of Harford County—

All of which are matters of record in the County Commissioners' office in Harford County.

In Testimony Whereof, I hereunto subscribe my name and affix the seal of the County Commissioners of Harford County this 18th day of October, 1928.

(Signed) J. M. Bosley, Clerk of the County Commissioners of Harford County. (Seal of County Commissioners.)

[fol. 55] Indenture

This Indenture, Made this 4th day of December, in the year one thousand nine hundred and sixteen, by the Girard Trust Company and John Hampton Barnes, of the City of Philadelphia and State of Pennsylvania, trustees, as hereinafter mentioned (and hereinafter called "trustees"), parties of the first part, and Frank J. Hoen of Baltimore County and State of Maryland (hereinafter called "Hoen"), party of the second part.

Whereas, By a decree of the Circuit Court for Harford County, in Chancery, passed on the 17th day of January, in the year 1913, in a cause therein pending entitled "Girard Trust Company, trustee, against Susquehanna [fol. 56] Power Company, et al., the above named Girard Trust Company and John Hampton Barnes were duly appointed trustees, with power and authority to sell all and singular the lands, property and rights in the proceedings in said cause mentioned and described, and the said trustees after complying with all the previous requisites of said decree, did, on or about the 24th day of February, 1913, sell unto the said Hoen, all and singular the said lands, properties and rights hereinafter more particularly described, at and for the sum of three hundred thousand dollars ($300,000) subject to the underlying mortgages on said properties aggregating about one hundred and fifty thousand dollars ($150,000) hereinafter set forth; and

Whereas, The aforesaid sale has been duly reported to and finally ratified and confirmed by the said court, and the purchase money aforesaid has been fully paid and satisfied to the said trustees, and the said trustees are authorized by the said decree to execute and deliver these presents.

Now, This Indenture Witnesseth, That the said trustees for and in consideration of the premises aforesaid, and the sum of five dollars current money to them in hand paid by the said Hoen, at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, do hereby grant, bargain, sell, alien, enfeoff, release, confirm, transfer, assign and convey unto the said Hoen, his heirs and assigns, all and singular the right, title, interest and estate at law and in equity, of all the parties to the aforesaid cause, in and to all the aforesaid lands, property, shares of stock and rights situated in Harford and Cecil Counties, in the State of Maryland and elsewhere, that is to say:—

I. All and singular the charters, powers, franchises, privileges, immunities and authorities which said Susquehanna Power Company formerly owned, held or was in possession of, vested with or entitled to, and which are more particularly described and referred to in the bill of complaint, proceedings and decree in the above entitled cause.

[fol. 57] II. All those certain parcels of land and properties with the improvements thereon, rights and appurtenances, more particularly described in the first to tenth, inclusive, paragraphs of the mortgage, deed of trust or indenture from said Power Company to said Girard Trust Company, trustee, dated the 1st day of November, 1906, and recorded among the Land Records of Harford County in Liber W. S. F. No. 119, folio 294, and among the Mortgage Records of Cecil County in Liber M. D. No. 5, folio 487, and fully and at length described in said bill of complaint and in the proceedings to said cause, and constituting properties and rights situated in the Fifth Election District of Harford County and hereinafter described as follows, that is to say:—

First. All the land and property, water rights, reversions and appurtenances described in a deed from Edward B. Warner and Eleanor G., his wife, to said Power Company, dated the 20th day of October, 1905, and recorded among the Land Records of Harford County in Liber W. S. F. No. 117, folio 149, recited to contain forty acres, but containing eighteen and thirty-one one-hundredths acres, more or less (and generally known as the "Hugh A. Jones" property), subject to the operation and effect of a declaration of trust by said Hugh A. Jones in favor of Charles A. Andrew et al., dated the 9th day of September, 1905, and recorded as aforesaid in Liber W. S. F. No. 117, folio 106.

Second. All the land and property, water rights and appurtenances containing ninety and one-half acres, more or less ("Partnership and Partner's Addition" properties) described in a deed from Charles A. Andrew and Julia Andrew, his wife, to the Susquehanna Power and Paper Company of Harford County, dated the 27th day of June, 1900, and recorded as aforesaid in Liber W. S. F. No. 100, folio 416.

Third. All the land and property, easements and appurtenances described in a deed from Edward B. Warner and Eleanor G., his wife, to The Susquehanna Power Company, dated the 20th day of October, 1905, and recorded as aforesaid in Liber W. S. F. No. 117, folio 150 (and generally known as the "Jane Shure or Kent Worthington" prop-
[fol. 58] erty, the "Glencove" property and easement (D.

C. W. Smith) and parts of the "San Domingo" and "Eldridge" farms properties).

Fourth. All the land and property, rights and appurtenances described in a deed from Charles A. Andrew and Julia Andrew, his wife, to the Susquehanna Power and Paper Company of Harford County, dated the 12th day of November, 1900, and recorded as aforesaid in Liber W. S. F. No. 100, folio 351 (part of the "J. Moores Worthington" property).

Fifth. All the land and property, rights and appurtenances described in paragraph a of a deed from Jay Gates, attorney, et al. to The Susquehanna Power & Paper Company of Harford County, dated the 15th day of May, 1899, and recorded as aforesaid in Liber W. S. F. No. 96, folio 209, containing thirty-five and three-fourth- acres, more or less, and called "McCoy's Chance" and "Union Fishery" or by whatsoever other names known or called.

Sixth. All the land and property, rights and appurtenances described in paragraph c of the said last named deed, called "Cowghil's Chance" or by whatsoever name known or called, containing two acres, thirty-six square perches, more or less.

Seventh. All the land and property, rights and appurtenances described in paragraph e of the said last named deed, containing three acres, more or less, and composed of a part of "McCoy's Chance" aforesaid.

Eighth. All the land and property, rights and appurtenances described in paragraph f of said last named deed, being an island in the Susquehanna River, called "Honey" or "McDowell's Island" or "Amos Island," recited to contain seventy acres, but containing thirty-nine acres, more or less.

Ninth. All the land and property, rights and appurtenances described in paragraph g of said last named deed, called "Drunkard's Harbor," or "Shad Rock Fishery," or by whatsoever name known or called, containing seven and one-half acres, more or less.

[fol. 59] Tenth. All the land and property, rights and appurtenances described in paragraph k of said deed—

containing seventeen acres, more or less, composed of part of a tract called "Well's Lot Enlarged" (Holloway) or by whatsoever name known or called. The lands and properties described in the aforegoing sub-paragraphs first to ten, inclusive, aggregating two hundred and forty acres, more or less.

III. All those certain other parcels of land and properties, rights and appurtenances with the improvements thereon, more particularly described in the eleventh to thirteenth, inclusive, paragraphs of said mortgage or deed of trust, and fully and at length described in said bill of complaint and proceedings in said cause, and hereinafter described as follows, that is to say:

Eleventh. All the land and property, rights and appurtenances described in paragraph b of said last named deed (W. S. F. No. 96, folio 209, called "Sweepstakes," "Sweepstakes Addition," "Alder Island," "Weed Island," "Cape Pair Island," "Many Islands," "Birch Island," and "Brannans Island,") containing two hundred and thirteen and one-quarter acres, more or less, and situated partly in the Fifth Election District of Harford, and partly in the Eighth Election District of Cecil County aforesaid.

Twelfth. All the land and property, rights and appurtenances described in paragraph j of said last named deed, called the "Andrew Garber Tract," containing one hundred and forty-one acres, two roods and twenty-eight square perches, more or less, situated in the Eighth Election District of Cecil County, and also described in two deeds to the Susquehanna Water Power & Paper Company of Harford County, from Andrew Garber and Susanna, his wife,—one dated the 4th day of April, 1889, and recorded among the Land Records of Cecil County in Liber J. A. D. No. 18, folio 95, and the other dated the 19th day of November, 1889, and recorded as last aforesaid in Liber J. A. D. No. 21, folio 26.

Thirteenth. All the land and property, rights and appurtenances described in a deed from Bernard G. Smith and [fol. 60] others to the Susquehanna Water Power & Paper Company of Harford County, dated the 3rd day of April,

1889, and recorded as last aforesaid in Liber J. A. D. No. 18, folio 87, containing sixteen acres, more or less, and situated also in the Eighth Election District of Cecil County.

IV. Fourteenth. All those certain other parcels of land, properties and improvements thereon, with the rights and appurtenances thereto belonging or appertaining or usable therewith, situated in the said Fifth Election District of Harford County, and more particularly described in a deed from Marshall J. Dodge and wife to said Susquehanna Power Company, dated the 5th day of August, 1908, and recorded among the land records of Harford County in Liber J. A. R., No. 130, folio 73, and generally known as the "Trenton Flint & Spar Company's property," containing three hundred and seventy acres, more or less, and the "Winfield S. Shure property" (formerly known as the "Bald Friar Ferry Place") containing twenty-six acres, more or less.

V. Fifteenth. All those certain other parcels of land, properties and improvements thereon, together with the rights and appurtenances thereunto belonging, appertaining or usable therewith, situated in the Fifth Election District of Harford County, and more particularly described in said bill of complaint and proceedings and in a deed from The Susquehanna Electric Power Company to said Susquehanna Power Company, dated the 8th day of August, 1908, and recorded as aforesaid in Liber J. A. R., No. 130, folio 72, including thereunder the "John's Design" property, containing eleven acres, more or less, and the said above described Hugh A. Jones property, supposed to contain forty acres, more or less, subject as hereinafter set forth under paragraph II, first.

VI. Sixteenth. All those certain parcels of land, properties and improvements thereon, together with the appurtenances belonging thereto or usable therewith, and the privileges, franchises and rights described in a deed from McCall Ferry Power Company to said Susquehanna Power Company, dated the 11th day of August, 1908, and recorded as aforesaid in Liber W. S. F., No. 125, folio 362, and [fol. 61] among the land records of Cecil County in Liber M. D., No. 8, folio 339, including thereunder: "Second," 1, The Hugh E. Dooley property, Fifth Election District, Har-

ford County; 2, The Daniel F. Landis property, Fifth Election District, Harford County; 3, The James R. Whiteford property (O. S. Lee, trustee), Fifth Election District, Harford County; 4, The John's Design property, Fifth Election District, Harford County; 5, The Grace Shure property, Fifth Election District, Harford County; 6, The Farmers' Warehouse property, Fifth Election District, Harford County; 7, The Sarah E. Orr property, Fifth Election District, Harford County; 8, The "Progress" property, Fifth Election District, Harford County; and Eighth District Cecil County; 9, The "New Enterprise" property, Fifth Election District, Harford County, and Eighth District, Cecil County; 10, Consent and release to construct a dam and flood, etc., the Tidewater Canal below the Maryland and Pennsylvania State line, and the Susquehanna Canal in the State of Pennsylvania above said line to Cully's Falls; 11, Consent and release to construct a dam and flood, etc. The Tidewater and Susquehanna Railroad above and below said State line; 12, Consent and release to construct a dam and flood, etc.; the Conowingo Bridge property below said State line; 13, The Sidney Cooper property, Fifth District, Harford County, lying between the Dooley and Landis properties above described. "Third," the Tidewater Canal Company property and rights situated in the Fifth, Second and Sixth Districts of Harford County, extending from Mason and Dixon's Line to its terminus in the city of Havre de Grace, together with all and singular its berme, bed, towpath, to its utmost easterly verge improvements, structures, locks, lockhouses and appurtenances thereto, basins, wharves, abutments, dams, aqueducts, water rights, privileges, easements, appurtenances and rights usable or capable of use in connection therewith, and including also all and singular certain lots of land situated in said city of Havre de Grace, known as Lots Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11 and 12 of Square 229; Lots Nos. 16 17, 18, 20, 21, 22, 23, 24, 25, 26, 27 of Square No. 208; Lots Nos. 213, 214, 215, 216, 217, 218 and 219 of Square No. 188, and being more particularly described in said deed from the said McCall Ferry Power Company. "Fourth," Seventy-five shares, being all the [fol. 62] capital stock of the proprietors of the Susquehanna Canal (Cecil County), a corporation of Maryland,

said shares being of the par value of one thousand pounds each. "Sixth," Four hundred shares, being two-thirds of the capital stock of the Conowingo Land Company of Cecil County, a corporation of the State of Maryland, said shares being of the par value of one hundred dollars each. "Seventh," Nine shares of stock, being all of the capital stock of The Susquehanna River Power Company, a corporation of Pennsylvania.

VII. Seventeenth. All those certain parcels or lots of land, property, privileges and rights situated in said city of Havre de Grace and more particularly described in said mortgage, bill and proceedings, and in a deed from Fred. Thallman to said Susquehanna Power Company, dated the 30th day of November, 1910, and recorded as aforesaid in Liber J. A. R., No. 132, folio 128.

Eighteenth and Nineteenth. One thousand shares, being all of the issued, outstanding and duly issuable capital stock of the Sowego Water & Power Company, a corporation of Pennsylvania, together with all and singular the rights and equities of the said Girard Trust Company, trustee, complainant in said cause, and in and to certain issuable obligations of said Sowego Company, and more particularly referred to in said bill of complaint and proceedings.

Twentieth. All the capital stock, except fifteen shares, being nine hundred and eighty-five shares of The Susquehanna River Electric Company of Baltimore City, a corporation of Maryland, and more particularly referred to in said bill of complaint and proceedings.

VIII. All and singular the properties and premises aforesaid, and in said proceedings and deed of trust or indenture described, consisting of various parcels of land and rights in and along the Susquehanna River in the State of Maryland, and aggregating about eight hundred and ninety-five acres on and along said river in Harford County, and about nine hundred and twenty-two acres in and as part of the bed of said river in Harford County, and about six hundred and eighteen acres on and along said [fol. 63] river in Cecil County, with about seven hundred and thirty acres in and as part of the bed of said river in Cecil County, and together amounting to about eighteen

hundred and eighty-seven acres in Harford County, and thirteen hundred and forty-eight acres in Cecil County, aggregating thirty-two hundred and thirty-five acres, more or less.

Together with all other lands, properties, rights and appurtenances and every interest therein of whatsoever character, and whether in possession, expectancy, remainder, reversion, riparian or otherwise, which are directed to be sold by the aforesaid decree; and together with also all water rights, franchises, privileges, rights of way, easements, flowage rights, warrants of survey, certificates of survey, patented or unpatented, improvements and appurtenances of every name and description, and all rents, tolls, earnings, profits, revenues and income arising or to arise from and out of the aforesaid lands, properties and rights or any part thereof.

To Have and to Hold, All and singular the above described and herein intended to be conveyed lands, properties and rights, to the said Hoen, his heirs and assigns, to his and their only proper use and behoof, to and for no other use, intent or purpose whatsoever, subject, however, as follows, that is to say:

(a) To whatsoever sum or sums may hereafter be found to be justly due and owing under and by virtue of the mortgage claim purporting to be a prior lien and executed and delivered by The Susquehanna Power & Paper Company of Harford County to the Germantown Real Estate Deposit & Trust Company, dated the 25th day of May, 1899, and recorded among the land records of Harford County in Liber W. S. F., No. 96, folio 217, and among the mortgage records of Cecil County in Liber J. G. W., No. 6, folio 250; and

(b) Subject further to whatsoever sum or sums may hereafter be found to be justly due and owing under and by virtue of a certain other mortgage claim purporting to be a prior lien to said indenture from said Power Company to said Girard Trust Company, trustee (but subsequent to the lien claimed as aforesaid by said Germantown Trust Company or its assigns), and executed and delivered by [fol. 64] said Susquehanna Power Company to Joel H. De Victor, dated the 1st day of September, 1905, and recorded

among the land records of Harford County in Liber W. S. F. No. 118, folio 1, and among the mortgage records of Cecil County in Liber M. D. No. 3, folio 493.

(c) And subject further to the terms and provisions duties and benefits, expressed and im-lied in an agreement dated the 24th day of March, 1908, and entered into between said Susquehanna Power Com-any, as party of the first part, and the following named respondents to said bill of complaint, namely: Columbia & Port Deposit Railway Company, and Philadelphia, Baltimore & Washington Railroad Company (the latter company an agent of the former company, and as agents of the Philadelphia & Baltimore Central Railroad Company), as parties of the second part, to which said agreement there were thereby made parts thereof, two other agreements, one dated the 2nd of July, 1906, and between the McCall Ferry Power Company as party of the first part, and the aforesaid parties of the second part as parties of the second part thereto; the other, supplementary thereto and dated the 13th day of August, 1906, and between the same parties as last mentioned; exhibits of each of said agreements are attached to the aforegoing bill of complaint as parts thereof.

In Witness Whereof, The said Girard Trust Company, trustee as aforesaid, hath hereunto subscribed its name by the hands of its vice-president, and attached its seal duly attested by its secretary; and the said John Hampton Barnes, trustee as aforesaid, hath hereunto set his hand and seal the day and year first above written.

Girard Trust Company, Trustee, by W. N. Ely, Vice-President. Attest: S. W. Morris. ((Corporate Seal.) John Hampton Barnes, Trustee. (Seal.)

Signed, sealed and delivered in the presence of Wm. J. Dickson, William F. Lesser.

[fol. 65] Said Indenture, duly acknowledged before William J. Dickson, a notary public for City of Philadelphia, State of Pennsylvania, Dec. 4, 1916, and recorded among the Land Records of Harford County in Liber J. A. R. No. 153, folio 424, and certified by D. G. Wilson, clerk. (Notarial Seal.)

Deed

This Deed, Made this 29th day of October, in the year one thousand nine hundred and twenty, by and between Frank J. Hoen and Grace C. Hoen, his wife, of the City of Baltimore, State of Maryland, parties of the first part, and The Susquehanna Power Company, a corporation, duly incorporated, party of the second part.

Whereas, Upon a petition filed before the Public Service Commission of Maryland, in a proceeding entitled, "In the matter of the proposed purchase from Frank J. Hoen, purchaser at judicial sale for the property and franchises of the Susquehanna Power Company by The Susquehanna Power Company," an order of said commission was passed authorizing the acquisition by the said party of the second part of the property, franchises, rights, privileges and charters hereafter mentioned and described. And the said party of the second part having complied with the terms and provisions of said order, these presents are executed.

Now, Therefore This Deed Witnesseth, That the parties of the first part, in pursuance of said order and in pursuance of the consideration recited in said order and the petition upon which said order was passed, and in consideration of the sum of five dollars and other valuable considerations, do hereby grant, bargain, sell, release, confirm, transfer, assign and convey unto the said party of the second part, its successors and assigns, all and singular the right, title, interest and estate of the grantors in and to all the following described or mentioned properties, shares of stock and rights and privileges, that is to say:—

[fol. 66] 1. All and singular the charters, powers, franchises, privileges, immunities and authorities formerly owned by The Susquehanna Power Company, held by it or in its possession, vested in it or to which it was entitled, and which are particularly described and referred to in the bill of complaint, proceedings and decree of the Circuit Court for Harford County in Chancery passed January 17, 1913, in a cause therein pending entitled "Girard Trust Company vs. Susquehanna Power Company".

2. All those certain parcels of land and properties, with the improvements thereon, rights and appurtenances, more particularly described in the first to tenth paragraphs, in-

clusive, of the mortgage deed of trust or indenture from The Susquehanna Power Company to the said Girard Trust Company, trustee, dated November 1, 1906, and recorded among the Land Records of Harford County in Liber W. S. F. No. 119, folio 294, and among the mortgage records of Cecil County in Liber M. D. No. 5, folio 487, etc., and fully and at length described in said bill of complaint and the proceeding in the aforesaid cause constituting the properties and rights situate in the Fifth Election District of Harford County, and described as follows, that is to say: First—All the land and property, water rights, reversions and appurtenances described in a deed from Edward B. Warner and Eleanor G. Warner, his wife, to The Susquehanna Power Company, dated October 20, 1905, and recorded among the Land Records of Harford County in Liber W. S. F. No. 117, folio 149, etc., recited to contain forty acres, but actually containing only eighteen and thirty-one one-hundredths acres, more or less, said tract being generally known as the "Hugh A. Jones property," being subject to the operation and effect of a declaration of trust by the said Hugh A. Jones in favor of Charles A. Andrew et al., dated September 9, 1905, and recorded among the Land Records of said Harford County in Liber W. S. F. No. 117, folio 106, etc. Second—All the land and property, water rights and appurtenances, containing ninety and one-half acres, more or less (partnership and partners addition properties) described in deed from Charles A. Andrew and Julia Andrew, his wife, to The Susquehanna Power and Paper Company of Harford County, dated June 27, 1900, and recorded, as aforesaid, in Liber W. F. S. No. 100, [fol. 67] folio 416, etc. Third—all the land and property, easements and appurtenances described in a deed from Edward B. Warner and Eleanor G. Warner, his wife, to The Susquehanna Power Company, dated October 20, 1905, and recorded as aforesaid, in Liber W. S. F. No. 117, folio 150, etc., and generally known as the "Jane Shure or Kent Worthington Property, the Glencove property and easement" (D. C. W. Smith), and parts of the San Domingo" and "Elkridge Farms Property". Fourth—All the land and property, rights and appurtenances described in a deed from Charles A. Andrew and Julia Andrew, his wife, to The Susquehanna Power and Paper Company of

Harford County, dated November 12, 1900, and recorded as aforesaid in Liber W. S. F. No. 100, folio 351, etc., (part of the "J. Moores Worthington" property). Fifth—All the land and property rights and appurtenances described in paragraph "A" of a deed from Jay Gates, attorney, et al., to the Susquehanna Power and Paper Company of Harford County dated May 15, 1899, and recorded as aforesaid in Liber W. S. F. No. 96, folio 209, etc., containing thirty-five and three-fourth acres, more or less, and called "McCoy's Chance" and "Union Fishery" or by whatsoever other names known or called. Sixth—All the land and property, rights and appurtenances described in paragraph "c" of the said last named deed called "Cowghil's Chance" or by whatsoever name known or called, containing two acres, thirty-six square perches, more or less. Seventh—All the land and property, rights and appurtenances described in paragraph "E" of said last named deed, containing three acres, more or less, and composed of a part of "McCoy's Chance" aforesaid, Eighth—All the land and property, rights and appurtenances described in paragraph "F" of said last named deed, being an island in the Susquehanna River, called "Honey" or "McDowells Island" or "Amos Island" recited to contain seventy acres, but containing thirty-nine acres, more or less. Ninth—all the land and property, rights and appurtenances described in paragraph "G" of said last named deed, called "Drunkards' Harbor" or "Shad Rock Fishery" or by whatsoever name known or called, containing seven and one-half acres, more or less. Tenth—All the land and property, rights and appurtenances described in paragraph "K" of said [fol. 68] last named deed, containing seventeen acres, more or less, composed of part of a tract called "Wells Lot Enlarged" (Holloway) or by whatsoever name known or called. The lands and properties described in the aforegoing sub-paragraphs one to ten, inclusive, aggregating two hundred and forty acres, more or less.

3. All those certain other parcels of land and properties, rights and appurtenances, with the improvements thereon, more particularly described in the eleventh to thirteenth inclusive paragraphs of said mortgage or deed of trust, and fully and at length described in said bill of complaint, and proceedings in said cause, and hereinafter described as

follows: Eleventh, All the land and property, rights and appurtenances described in paragraph "B" of said last named deed (W. S. F., No. 96, folio 209), called "Sweepstakes," "Sweep Stakes Addition," "Alder Island," "Weed Island," "Cape Fair Island," "Many Islands," "Birch Island," "Brannans Island," containing two hundred and thirteen and one-quarter acres of land, more or less, and situate partly in the Fifth Election District of Harford County and partly in the Eighth Election District of Cecil County aforesaid. Twelfth, All the land and property, rights and appurtenances described in paragraph "J" of said last named deed, called the "Andrew Garber Tract," containing one hundred and forty-one acres, two roods and twenty-eight square perches, more or less, situate in the Eighth Election District of Cecil County, and also described in two deeds to The Susquehanna Water Power and Paper Company of Harford County, from Andrew Garber and Susanna, his wife, one dated April 4, 1889, and recorded among the land records of Cecil County in Liber J. A. D., No. 18, folio 95, etc., and the other dated November 19, 1889, and recorded as last aforesaid in Liber J. A. D., No. 21, folio 26. Thirteenth, All the land and property, rights and appurtenances described in a deed from Bernard G. Smith and others to The Susquehanna Power and Paper Company of Harford County, dated April 3, 1889, and recorded as last aforesaid in Liber J. A. D., No. 18, folio 87, etc., containing sixteen acres, more or less, and situate also in the Eighth Election District of Cecil County.

[fol. 69] 4. All those certain other parcels of land, properties and improvements thereon, with the rights and appurtenances thereto belonging or appertaining or usable therewith, situate in the said Fifth Election District of Harford County and more particularly described in a deed from Marshall J. Dodge and wife to said Susquehanna Power Company, dated August 5, 1908, and recorded among the land records of Harford County in Liber J. A. R., No. 130, folio 73, and generally known as the "Trenton Flint and Spar Company's property," containing three hundred and seventy acres, more or less, and the "Winfield S. Shure property," formerly known as the "Bald Friar Ferry Place," containing twenty-six acres, more or less.

"Second." 1, The Hugh E. Dooley property, Fifth Election District, Harford County. 2, The Daniel F. Landis property, Fifth Election District, Harford County. 3, The James R. Whiteford property (O. S. Lee, trustee), Fifth Election District, Harford County. 4, The John's Design property, Fifth Election District, Harford County. 5, The Grace Shure property, Fifth Election District, Harford County. 6, The Farmers' Warehouse property, Fifth Election District of Harford County. 7, The Sarah E. Orr property, Fifth Election District, Harford County. 8, The "Progress" property, Fifth Election District, Harford County, and Eighth District, Cecil County. 9, The "New Enterprise" property, Fifth Election District, Harford County, and Eighth District, Cecil County. 10, Consent and release to construct a dam and flood, etc., the Tidewater Canal below the Maryland and Pennsylvania State Line, and the Susquehanna Canal in the State of Pennsylvania, above said line to Cully's Falls. 11, Consent and release to construct a dam and flood, etc., the Tidewater and Susquehanna Railroad above and below said State line. 12, Consent and release to construct a dam and flood, etc., the Conowingo Bridge property below said State line. 13, The Sidney Cooper property, Fifth District, Harford County, lying between the Dooley and Landis properties above described.

"Third." The Tidewater Canal Company property and rights, situate in the Fifth, Second and Sixth Districts of Harford County, extending from Mason and Dixon's Line [fol. 70] to its terminus in the city of Havre de Grace, together with all and singular its berme, bed, towpath, to its utmost easterly verge, improvements, structures, locks, lock houses and appurtenances thereto, basins, wharves, abutments, dams, aqueducts, water rights, privileges, easements, appurtenances and rights usable or capable of use in connection therewith, and including also all and singular certain lots of land situate in said city of Havre de Grace, known as Lots Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12 of square 229; Lots Nos. 16, 17, 18, 20, 21, 22, 23, 24, 25, 26, 27 of square No. 208; Lots Nos. 213, 214, 215, 216, 217, 218 and 219 of square No. 188, and being more particularly — in said deed from the said McCall Ferry Power Company.

"Fourth." Seventy-five shares, being all the capital stock of the proprietors of the Susquehanna Canal (Cecil County), a corporation of Maryland, said shares being the par value of one thousand pounds each. "Sixth." Four hundred shares, being two-thirds of the capital stock of the Conowingo Land Company of Cecil County, a corporation of the State of Maryland, said shares being of the par value of one hundred dollars each. "Seventh." Nine shares of stock, being all of the capital stock of The Susquehanna River Power Company, a corporation of Pennsylvania.

5. All those certain parcels or lots of land, property, privileges and rights, situate in said city of Havre de Grace and more particularly described in said mortgage, bill and proceedings, and in a deed from Fred Thallman to said Susquehanna Power Company, dated November 30, 1910, and recorded as aforesaid in Liber J. A. R. No. 132, folio 128, eighteenth and nineteenth, one thousand shares being all of the issued, outstanding and duly issuable capital stock of the Sowego Water and Power Company, a corporation of Pennsylvania, together with all and singular the rights and equities of the said Girard Trust Company, trustee, complainant, in said cause, and in and to certain issuable obligations of said Sowego Company, and more particularly referred to in said bill of complaint and proceedings. Twentieth, all the capital stock, except fifteen shares, being nine hundred and eighty-five shares of The Susquehanna River Electric Company of Baltimore City, a cor- [fol. 71] poration of Maryland, and more particularly referred to in said bill of complaint and proceedings.

6. All and singular the properties and premises aforesaid in and to said proceedings and deed of trust or indenture described, consisting of various parcels of land and rights in and along the Susquehanna River in the State of Maryland and aggregating about eight hundred and ninety-five acres on and along said river in Harford County, and about nine hundred and twenty-two acres in and as part of the bed of said river in Harford County and about six hundred and eighteen acres on and along said river in Cecil County, with about seven hundred and thirty acres in and as part of the bed of said river in Cecil County, and together amounting to about eighteen hundred and eighty-seven acres in Harford County and thirteen hundred and

forty-eight acres in Cecil County aggregating thirty-two hundred and thirty-five acres, more or less. Being and intending to be the same properties, right, charters, franchises, powers, etc., which by deed dated December 4, 1916, and recorded among the land records of Cecil County in Liber C. S. P. No. 1, folio 309, etc., were granted and conveyed by the Girard Trust Company, et al., trustees to the said Frank J. Hoen, said deed being also duly recorded among the land records of Harford County in Liber J. A. R. 153, folio 424. It being the intention and purpose of the parties hereto to convey by this deed to the said party of the second part, its successors and assigns, the same and all of the property thus acquired by the said Frank J. Hoen and reference to said deed shall have the same effect and to all intents and purposes as if each and all of the provisions thereof in reference to the description of said properties hereby intended to be conveyed had been herein fully set forth.

Together with all other lands, properties, rights and appurtenances and every interest therein of whatsoever character and whether in possession, expectancy, remainder, reversion, riparian or otherwise, which are directed to be sold by the decree of the said court above referred to. And together also with all the water rights, franchises, privileges, rights of way, easements, flowage, rights, war- [fol. 72] rants or survey, certificates of survey, patented or unpatented, improvements and appurtenances of every name and description, and all lands, tolls, earnings, profits, revenues, and income arising or to arise from and out of the aforesaid lands, properties and rights or any part thereof. To have and to hold all and singular the above described and hereby intended to be conveyed lands, properties and rights, to the said party of the second part, its successors and assigns; subject, however, to the claims, rights and agreements set forth in the above deed from the said Girard Trust Company, et al., trustees, to the said Frank J. Hoen, to the same extent and in the same manner as if the said provisions of said deed were herein again fully incorporated. And the said parties of the first part covenant that they will warrant specially the property, privileges and rights hereby granted and intended to be conveyed, and that they will execute such further assurances thereof as may be requisite.

Witness the hands and seals of the said parties of the first part.

Frank J. Hoen. (Seal.) Grace C. Hoen. (Seal.)

Test: L. Murray Warfield.

Said Deed was duly acknowledged before Elsie Metzel, a Notary Public for Baltimore City, Maryland, October 29, 1920, and recorded among the land records of Harford County in Liber J. A. R. No. 171, folio 405, and certified by D. G. Wilson, Clerk. (Notarial Seal.)

The original proceedings in the cause of the State of Maryland against The Susquehanna Canal Company, The Tidewater Canal Company, The Philadelphia and Reading [fol. 73] Railroad, and unknown holders of bonds of the said Canal Companies, in the Circuit Court for Harford County, in Chancery, 1894, are abstracted as follows:

Bill of complaint filed in the Circuit Court for Harford County, December 7th, 1894, for the sale of the Canal extending from Havre de Grace, Harford County, to Wrightsville, in the County of York, Pennsylvania, and all its works, etc., covered by mortgages set out in the bill from both of the said Canal Companies to the State of Maryland, for the distribution of proceeds of sale according to the priorities of their creditors, and appointment of a receiver of both of said Canal Companies, and of all their property, and for further relief. Inter alia, the bill sets up that the Susquehanna Canal Company is a corporation of Pennsylvania, exercising franchises within Maryland, and the Tidewater Canal Company is a corporation of Maryland, and the two corporations are the owners of the canal above mentioned, being managed and operated under one management by the two companies. The indebtedenss to the State by the two companies of one million dollars on bond and mortgage, and other indebtedness in bonds by the Tidewater Company of $97,800, and of the Susquehanna Company of $200,000. Defaults in payment of interest and additional and subsequent liens and unfunded debt, etc., and then prays for sale of all the canal properties and appointment of receivers, and as one of the exhibits is a lease of both the canals to the Reading Railroad, dated 1872. S. Johnson Poe and George L. VanBibber were appointed receivers,

1895. Answers of all defendants filed. Simultaneously with the filing of the above bill, there was filed in the Court of Common Pleas of York County, Decemreb 15, 1894, bill of complaint by the State of Maryland vs. the same parties defendant. Answers filed by all defendants, and on the 15th day of July, 1895, the Court of Common Pleas of York County, in Equity, decreed the amount of indebtedness under the mortgages due by the said canal companies, and other indebtedness by the said canal companies under subsequent liens, and recites the proceeding for the sale of the Tidewater Canal, in the Circuit Court for Harford County, in Equity, and that all the parties in interest desired that the continuous canal from Wrightsville to Havre [fol. 74] de Grace be sold at the same time and placed under concurrent and ancillary decrees of said courts of Pennsylvania and Maryland, so that the purchasers may have an opportunity to buy the entire franchise and property of both said canal companies; and that all the property of the Susquehanna Canal be sold, that is, its rights, franchises, easements and appurtenances; and that VanBibber and Poe aforesaid be appointed trustees to sell; and that an ancillary or concurrent decree shall be procured in the Circuit Court for Harford County before proceeding to execute the sale under the decree of the Court of Common Pleas. And on the 6th day of August, 1895, the Circuit Court for Harford County, in Chancery, decreed after reciting the decree of the Court of Common Pleas aforesaid, that the provisions of said decree be and are hereby adopted and approved as part of this decree, as fully as if herein repeated, and that the said Tidewater Canal Company be sold as directed by said decree of the Court of Common Pleas, and that VanBibber and Poe, receivers, shall sell said canal and all its appurtenances, free of all claims of the parties. And the said receivers on July 6th, 1896, reported the sale of both of the said canal companies and the franchises and property thereof for $80,000 to E. J. D. Cross, both to the Court of Common Pleas and to the Circuit Court for Harford County, in Chancery. And the said Court for Harford County in Chancery, on the 6th of August, 1896, and the Court of Common Pleas of York County, on August 12, 1896, finally ratified said sale, and thereafter by separate deeds the said receivers conveyed the property, franchises

and rights of the Tidewater Canal Company to the said Cross, by deed, March 14, 1902, recorded among the Land Records of Harford County in Liber W. S. F. No. 104, folio 172. And the said Cross and wife conveyed the said Tidewater Canal and the franchises and property thereof to James H. Harlow and George K. McGaw by deed April 10, 1902, recorded as aforesaid in Liber W. S. F. No. 104, folio 172. And Harlow and McGaw and their respective wives, by their deed June 12, 1905, to Alexis P. Bartlett et al., recorded W. S. F. No. 115, folio 267, conveyed the said canal rights, franchises and privileges to them, their heirs and assigns and the survivor of them. And the said Bartlett and Mackey, on the 7th day of August, 1905, conveyed to the Knickerbocker Trust Company, trustee, under the [fols. 75-81] mortgage from the McCall Ferry Power Company, dated June 15, 1905, and recorded in Liber W. S. F. No. 116, folio 328, conveyed the said canal to the said trustee, its successors and assigns, with all its properties, franchises, rights and privileges. And thereafter, as shown above, the McCall Ferry Power Company and the said Knickerbocker Trust Company, trustee, conveyed the said Tidewater Canal, and all its franchises, properties and rights and appurtenances to the said Power Company on August 11, 1908.

[fol. 82] That Fred R. Williams on the 27th day of December, 1922, made application for a warrant of survey of certain vacant land in the bed of the Susquehanna River, upon which application a special warrant was issued on the same date and is recorded among the records of the Land Office of Maryland in Liber J. S. S. No. 1, folio 120;

That in pursuance of said warrant a survey was made by W. Elijah Somerville, County Surveyor of Harford County, for the said Fred R. Williams, and a certificate of plat thereof returned to the said land office;

[fol. 83] That the land so surveyed and returned included all of the bed of the Susquehanna River between a point twenty-two hundred feet south of the old Conowingo Bridge and a point approximately opposite the southerly point of Robert's Island, with the exception of certain islands then existing in said river, the titles to which were then and are now in the Susquehanna Power Company;

That the land so surveyed contains two thousand and twelve acres, more or less, and includes within its metes and

bounds all of the bed of the Susquehanna River between the point of beginning and the breast of the Conowingo Dam, now part of the bed of the pool in question in this case, except the islands already referred to;

That included in said certificate of the surveyor is the following statement: "And I hereby further certify that no part of the above land is covered by older or former surveys; that no part of it is covered by navigable water and that there are no improvements whatsoever thereupon."

That on the 20th day of December, 1923, the said Fred R. Williams assigned and transferred all of his interest in said tract of land to The Susquehanna Power Company and requested that the patent thereto be issued to said company, which certificate, plat and assignment are recorded among the records of said land office, Patent Certificate No. 797-A;

That in pursuance of the aforegoing a patent was issued to The Susquehanna Power Company for the above described tract of land now constituting in part the bed of said pool, on the 28th day of December, 1923, which patent is recorded among the records of said office in Liber J. S. S. No. 1, folio 181.

[fols. 84-101] BEFORE STATE TAX COMMISSION OF MARYLAND

Statement of Evidence

[fol. 102] Thereupon JESSE V. SEALY, a witness of lawful age, produced on behalf of The Susquehanna Power Company, having been duly sworn, testified as follows:

Direct examination.

By Mr. Williams:

Q. Mr. Sealy, where do you live?

A. Lansdowne, Pennsylvania.

Q. How long have you been living in Lansdowne or in Philadelphia?

A. Ten years.

Q. What is your occupation?

A. An accountant.

Q. And you have been engaged in what work?

A. I am employed by the Philadelphia Electric Company and its associated and affiliated companies.

Q. Amongst which are The Susquehanna Power Company and the Philadelphia Electric Power Company?

A. That is right.

Q. Please tell the Commission what has been your training for that work?

A. I have been engaged with the Philadelphia Electric Company since 1926 and have had active accounting experience with other utilities for fifteen years prior to that.

Q. Name some of them, please, and state the date in 1926 when you came to the Philadelphia Electric Company?

A. The Bay State Street Railway of Boston from 1914 to 1916; R. N. Poisful, consulting engineer, 1921 to 1924; 1918 to 1924 with the American Ship Building Corporation at Hog Island; 1908 to 1918, except for the period of 1914 to 1916, I was with the Stone & Webster Engineering Corporation.

Q. Prior to your entering into the service of any of those companies, did you have any preliminary training, and, if [fol. 103] so, what?

A. I had ordinary schooling and a special accounting course at the Northeastern College in Boston.

Q. Mr. Sealy, will you please state to the Commission what figures in the return made to the County Commissioners of Harford County in 1928 were intangible?

(Mr. Robinson:) I object. Is he qualified to do that?

By Mr. Williams:

Q. Will you look at the return then and show us what items in the return were intangible?

A. The return to the Public Service Commission?

Q. The return to the County Commissioners. That is the one on which their experts did their work. Have you a copy of that?

A. You are talking of the return to the County Commissioners?

(Mr. Robinson:) Did you make different returns?

(Mr. Williams:) I asked him with reference to the return of the County Commissioners.

(Mr. Robinson:) That is for the purpose of taxation. The other one was for the purpose of dividends. Which one do you want to talk about?

(Mr. Williams:) You can get at that later.

Q. I will ask you, Mr. Sealy, if you are familiar with the books of The Susquehanna Power Company, and from that familiarity can you tell us the elements that went into the intangibles that were made in the report to the State Tax Commission in 1928, to the best of your recollection?

(Mr. Robinson:) Do you mean the State Tax Commission return?

(Mr. Archer:) No, the County Commissioners.

(Mr. Williams:) As I understand it, the County Commissioners got a copy of the return to the State Tax Commission.

[fol. 104] (Mr. Robinson:) Where is that return to the State Tax Commission?

(Mr. Williams:) The County Commissioners must have it—they got it—and on the strength of that they put a questionnaire to The Susquehanna Power Company which was answered. We have a copy of the answer to that.

Q. Now, I want to ask you, with reference to the items which went to make up that return to the State Tax Commission in 1928, and to find out what part of those expenses were intangible?

(Mr. Robinson:) I would like to see that. If you are examining him with reference to a written report, I would like to see it.

(Mr. Williams:) Since I spoke to Mr. Robinson, I think we have a copy of that return that was made to the State Tax Commission. I will hand him that.

(Mr. Archer:) Can we see it?

(Mr. Williams:) Yes.

(Paper handed to Mr. Archer.)

(Mr. Williams:) I will withdraw the last question and ask another one.

By Mr. Williams:

Q. Mr. Sealy, I hand you now a copy of the return made to the State Tax Commission in 1928. You have stated

that you are familiar with the books of The Susquehanna Power Company. Now, I will ask you if you will please state what part of the elements of costs that were made in that return were tangible items. I will ask you to name that first, and then after that I will ask you to name the intangibles. I take it for granted, probably, if you name the tangibles, the balance are intangibles, because that would follow. Considering particularly now, and I am asking you, with reference to the tangibles in Harford County.

[fol. 105] (Mr. Robinson:) Now, we object to that question, may it please your Honors, because it is very confusing, and I would like for my brother to ask this gentleman if he knows what an intangible is.

(Mr. Williams:) I would rather proceed in my own way.

(Mr. Howard:) I think that you can cross-examine him. I think that he is entitled to testify, and that you can testify yourself on cross-examination, or satisfy yourself, if you don't think that he is qualified.

(Mr. Robinson:) But, my brother suggests to him the answer to that question. He says, "I presume, if you name the tangibles, of course, the rest are intangibles."

(Mr. Archer:) That would mislead anybody.

(Mr. Robinson:) Yes.

(Mr. Howard:) I don't think it is misleading.

(Mr. Robinson:) It would be misleading to me.

(Mr. Williams:) I think that the matter, it seems to me, is clear.

(Mr. Robinson:) I object to the question in its best form. You can ask him whether he knows, but I do not think that you ought to ask him to tell what is tangible and then deduct from that the intangibles.

(The Chairman:) The objection is overruled.

(Mr. Williams:) My purpose is, may it please your Honor——

(Mr. Howard:) The objection has been overruled.

By Mr. Williams:

Q. Now, Mr. Sealy, if you will, my brother wants to see if you understand what is tangible and what is intangible.

[fol. 106] (Mr. Howard:) I take it that Mr. Robinson has probably lost his interest in that.

(Mr. Robinson:) No, I object to the question.

By Mr. Williams:

Q. Now, if you will, please take that account and give us the tangibles. Now, after you give us the tangibles, then please state what part of them are in Harford County.

(The Chairman:) Mr. Williams, you mean for him to name the items that are designated or considered tangibles?

(Mr. Williams:) Yes.

(The Chairman:) Name the items that are considered tangibles, and read the figures?

(Mr. Howard:) You have got that in typewritten form, haven't you?

(The Witness:) Yes.

(Mr. Robinson:) I think that this gentleman ought to be permitted to answer the question without having suggestions made to him.

(Mr. Howard:) It is entirely proper for him to look at his papers, Mr. Robinson.

By Mr. Williams:

Q. You have had a copy made, and have it here?

A. In this statement, I can indicate wihch of these various items fall within tangibles, intangibles or both. I can not determine from this piece of paper the dollars that fall in such classification, nor can I determine the allocation of tangible property between the counties from these papers.

Q. Now, will you answer the question now, in your own way, Mr. Sealy?

(Mr. Robinson:) He does not have to have those reports.

[fol. 107] (The Witness—reading from the statement that has been filed with the State Tax Commission): Investment in fixed capital, $36,466,583 as of January 1, 1928. The item of organization has been classified only as intangible. The item of land has been classified as both tangible and intangible, but the same is true of the dam, reservoir, and water conduits.

(Mr. Robinson:) Has been what?

By Mr. Williams:

Q. Go ahead.

(The Witness:) Plant, structures. And, to the best of my recollection, some part of the turbines and water

wheels; also electrical generators; other electrical equipment and other power plant equipment. That is a small part of the last four items were classified as intangible. The major part is tangible.

(Mr. Robinson:) The last four you referred to.

(The Witness:) The last four I referred to.

Land required for transmission line right of way is principally tangible capital, whereas the rights of way for the transmission system have been classified as intangible. The transmission system, structures, poles and fixtures, overhead conductors, overhead telephone system, is substantially all tangible capital. There is some small amount that has been classified an intangible.

Did I read the other general equipment in that last group of accounts, please?

(Thereupon, the reporter read a portion of the above answer to the witness.)

(The Witness:) And, other general equipment should be included in there.

Engineering and superintendence has been prorated in part to tangible capital and in part to intangible.

(Mr. Howard:) I don't know whether the Commission quite understands you, Mr. Sealy, when you say that. [fol. 108] What do you do? In connection with the Public Service Commission's accounting, is a part of this, or any part of it put under any particular heading, or do you show what part of it is derived from intangible facilities and what part tangible?

(The Witness:) I am describing that.

(Mr. Robinson:) You say that it has been allotted. What do you mean? By whom, or how?

(The Witness:) In connection with certain studies that we have made, in connection with this appeal, we have determined.

(Mr. Robinson:) You say "we"?

(The Witness:) Susquehanna Power Company.

(Mr. Robinson:) You mean you are reading from some report.

(Mr. Howard:) He is referring to this, certainly.

(The Witness:) I am attempting to answer Mr. Williams' question, which I took to be what treatment was actually given, what these figures included.

(Mr. Robinson:) No, I do not understand that to be the question. I understood that you were asked, as an expert, to tell their Honors what were and what were not intangibles.

(Mr. Williams:) They mean, if your Honors please, that he will be able to explain that.

(Mr. Robinson:) But, he not explained it. He is not explaining anything that he knows now. He is talking about something else.

(Mr. Williams:) Maybe he will get to that.

(Mr. Robinson:) Mr. Williams, I am objecting to the court, and I am doing it in an orderly manner.

[fol. 109] (Mr. Williams:) Go ahead.

(Mr. Robinson:) If he is talking about some studies that he has made for the purpose of this case, that is one thing; but I think, as an expert, if he comes here to tell your Honors what is tangible and what is intangible, he ought to be able to bring that out to you- Honors without having to use a statement made by or in conjunction with somebody else, as a study for this case. If he is an expert, we want his opinion of it, and we want to know why.

(Mr. Howard:) He is an expert accountant, your Honor, and he understands what is in these books. The books of the company were kept under his supervision. An expert does not, of course, do all of the work, but he does it with the assistance of others. Naturally, he has people help him. That does not affect the propriety of his evidence.

(Mr. Robinson:) That would be true as to an exact science, like figures, but that is not what these figures are. This is a matter where he is called upon purely as an expert for his opinion as to what is and what is not tangible. I think that he ought to show that he understands it himself and not depend on what somebody else has furnished him.

(Mr. Archer:) It is merely guesswork as to what it is or is not.

(Mr. Robinson:) Of course, it is.

(The Chairman:) The Commission thinks that it will come out in the course of examination.

(Mr. Robinson:) The Commission thinks that it will all come out all right in the examination?

(The Chairman:) Yes.

(Mr. Robinson:) It may come out all right, sir, but this is a very irregular way for him to take an item of two million dollars and say, why we concluded part of that [fol. 110] was tangible and a part of it intangible. That is not very illuminating. That is not very helpful to the Court.

(The Chairman:) The Commission wants to know what that is.

(Mr. Williams:) He can cross-examine him.

(Mr. Robinson:) Yes. I do not suppose that the ordinary rules of evidence govern, but at the same time we should do this in a regular way.

By Mr. Williams:

Q. Have you finished?

A. No.

Q. Go ahead?

A. Engineering and superintendence is determined to be both tangible and intangible, a part to each.

(Mr. McNabb:) That is a two million dollar proposition.

(The Witness:) The remaining items, groups, undistributed construction expenditures——

(Mr. McNabb—interposing:) We don't have that on our sheet.

(The Witness:) Well, the items following engineering and superintendence during construction. The remaining items on Sheet 3 and the first item on Sheet 4, other expenditures during construction, were determined to be intangible.

By Mr. Williams:

Q. Mr. Sealy, you say——

(Mr. Robinson:) You say were determined to be?

(The Witness:) Were determined to be.

By Mr. Williams:

Q. Will you please now go over that report and give us the figures on what part of that is divided, how it is divided, and what part is tangible and what part is intangible?

A. That information does not appear on this report. I will have to use another statement.

[fol. 111] Q. Well, will you go ahead in your own way and explain that?

A. But, it is not in that.

Q. Can you explain it?

A. That does not give it to me. There are other papers there.

By Mr. Howard:

Q. Have you prepared a report of your examination of the books in typewritten form, Mr. Sealy?

A. The work sheets show it.

Q. What you have just been discussing?

A. Yes, such a tabulation has been prepared.

(Mr. Robinson:) Did you do it?

(The Witness:) Yes, I did it.

(Mr. Robinson:) You did it?

(The Witness:) Yes.

By Mr. Williams:

Q. Is this it?

A. No.

Q. See if that is it, will you (handing paper to witness)?

A. Yes.

(Mr. Robinson:) May we see it, please.

(The Witness:) That is it.

By Mr. Williams:

Q. On the present description, will you give the figures and the methods by which you have divided them?

(Mr. Robinson:) May I see that? We have never seen that.

(Mr. Williams:) Sir?

(Mr. Robinson:) It has never entered into any report that has been made.

(Mr. Williams:) This is not an exhibit (indicating). [fol. 112] Those are the figures by which he divided it, which will be given.

(Mr. Archer:) We are certainly entitled to see it, if you are going to read from it.

(Mr. Williams:) I understand, but it has not been introduced in evidence, hasn't entered into a report made to the State Tax Commission or the Public Service Commission, or the County Commissioners of Harford County.

(Mr. Robinson:) I thought that we might have an opportunity to look at it before he examined it.

By Mr. Williams:

Q. Mr. Sealy, haven't you prepared a statement showing the tangibles in Harford County?

A. Yes.

Q. Well, now, is not this the statement?

A. That is the statement.

Q. Now, refreshing your recollection from that, won't you please state from the report what are tangibles and intangibles as you described them in that classification?

(Mr. Robinson:) Mr. Williams, we would like to see the statement.

(Mr. Williams:) Sir?

(Mr. Robinson:) We would like to see it.

(Mr. Williams:) He is using that merely for the purpose of refreshing his mind. After he has made his statement we will be glad to turn it over to you.

(Mr. Archer:) We would like to know what it was prepared from.

(Mr. Williams:) I will ask him that.

(Mr. Archer:) I think that it would be a good idea to do that first.

[fol. 113] By Mr. Williams:

Q. I will ask you if you prepared that from the books, and what its relation is to the account that was filed with the State Tax Commission.

(Mr. Archer:) Mr. Williams, what we don't understand is, is that a report that was prepared by him as an expert, or did he simply go over the books and find out what somebody else had done, and made that up from a set of books where they arbitrarily said that certain articles were tangible, and others intangible?

(Mr. Williams:) Let him describe where he got the information.

(Mr. Archer:) Yes, that is what we want to know.

By Mr. Williams:

Q. Where did you get the information you are now giving, and how did you get it?

A. If I may, I will describe what this is, first. This is a statement of land, buildings and structures of the Second, Fifth and Sixth Election Districts in Harford County, showing a figure of land, $136,709.

Mr. Robinson:

Q. Now, he is just reading a report, Mr. Williams.

(Mr. Williams:) No, he is telling you what that is.

(Mr. Robinson:) No, that is not answering the question at all. If he simply got that, copied that from something else, took that from somebody else's books, we object to it and to him giving that as an expert opinion.

(Mr. Howard:) Is this a transcript from the books of the company?

(The Witness:) The figures I have just read you are taken from the books of the company and I intended to explain the derivation after I explained the nature of this statement, if that is in order.

By Mr. Williams:

Q. Go ahead?

A. The statement, likewise, of buildings, structures, represent the company's investment in buildings and structures [fol. 114] as of December 31, 1927, amounting to $7,974,904. The land item represents the investment figures appearing on the books of the County Commissioners of Harford County.

Q. You get those values from that?

A. I get the value of the land from that source.

Q. Yes?

A. I get the value of the buildings and structures—or at least, as I have stated, buildings and structures up to as of December 31, 1927——

Q. Which you get from your books?

A. Which are shown on our books.

Q. Yes? Go ahead with it now.

A. There is a similar statement for Cecil County.

Q. You needn't go into that. Just give Harford County? Now, read off the figures.

A. Land, $136,790; buildings and structures as follows: Dam and reservoir, $1,083,062; regulation gates and appurtenances, $167,390; power house, $6,293,305; railroad to Havre de Grace, $350,963; transmission lines, $80,184.

Q. That transmission line is the one from the dam toward Cecil County, as far as it is in Harford County, isn't it?

A. Also the——

Q. (Interposing.) Construction line. Is the other there?

A. Construction line between the dam and the Pennsylvania-Maryland State Line. The total of the items I have just enumerated is $7,974,904. Total lands and buildings, $8,111,613.

Q. That, as I understand you, is the tangible investment in Harford County?

A. It is not strictly that. It is that with respect to buildings and structures. It is in that with respect to land. The land represents the assessment on the books of the County Commissioners of the county.

(Mr. Howard:) Does the Commission understand that? There are two sources from which those figures were secured. The figures on the land are simply those, an adoption of the assessment figures of the county; the figures [fol. 115] on buildings and structures are derived, as I understand it, from the statement on the books of the company.

(The Witness:) That is true. Our reason for having two different bases of figures is because we are unable to determine the exact investment in all land. This land was acquired over a long period of years and when the stock of The Susquehanna Power Company was acquired and their books were acquired with it, there was not sufficient detail to determine the exact investment in the individual parcels of land, but the figure that was on the books included many things besides land.

By Mr. Williams:

Q. You have referred to figures as of September 30, 1928?

A. I have.

Q. Do you have those?

A. I do have.

By Mr. Howard:

Q. That is the date of the assessment?

A. Original date of assessment.

(Mr. Williams:) Yes.

(Mr. Archer:) October?

(Mr. Williams:) September.

By Mr. Williams:

Q. The first figure is the figure which the County Commissioners used, based on the time that they used in their calculations?

A. Yes.

Q. While this is the actual date of assessment?

A. That is true. Here is a similar statement.

Q. When you say a similar statement, you mean tangibles in Harford County?

A. Exactly.

Q. Yes.

A. Tangibles apparently in Harford County consist of land, buildings and structures, and that is as of September 30, 1928, and about $8,748,509.

Q. Now, of what do those items consist, Mr. Sealy?

A. That is an amount consisting of land, total amount $136,709.

[fol. 116] Q. The same figure?

A. Which is the same figure that appears in the statement of nine months previously.

Q. Previously?

A. Yes; buildings and structures. And this figure represents our investment in such property as of September 30, 1928, amounts to $8,611,800.

Q. What is the difference between that and the similar item of the other?

A. Approximately, $600,000.

Q. Yes, go ahead.

A. That answers your question.

(Mr. Howard:) This difference is due to different expenditures made in the interim.

(The Witness:) Yes, that is true.

By Mr. Williams:

Q. Go ahead.

A. I think that answers your question.

Q. Are there any other items?

A. Well, I can give a detail of the buildings and structures, if you want that.

Q. Give the detail.

A. Dam investment, $1,167,894——

(Mr. Robinson:) What is this that you are giving?

(Mr. Williams:) Detailed figures.

(Mr. Robinson:) As of October?

(Mr. Williams:) September 30th.

(The Chairman:) What is that?

(The Witness:) $1,169,894; regulation gates and appurtenances, $180,068; power house, $6,805,746; railroad to Havre de Grace, $343,972; transmission line, $112,120, making a total of $8,611,800.

By Mr. Williams:

Q. As against what figures on the other, previous statement, of January 1, 1928?

A. Total buildings and structures as of December 31, 1927, $7,974,904.

[fol. 117] (Mr. Williams:) I would like to have the Commission's permission to file these statements, may it please the Commission, and I will ask the stenographer to earmark them, identify them.

(Mr. Robinson:) We object. Our objection goes to that, I suppose?

(The Chairman:) What?

(Mr. Robinson:) We object to these figures.

(Mr. Howard:) We could offer those figures (indicating) and we could point them out in connection with the figures we have there.

(Mr. Robinson:) My objection is to the figures.

(The Chairman:) You can't object to those?

(Mr. Robinson:) O, yes, I can; yes, sir. You can overrule the objection, but I certainly can object.

(Mr. Howard:) You could object to anything.

(The Chairman:) They will be received.

(Thereupon, the statements above referred to were received in evidence and marked "Power Company's Exhibit No. 1" and "Power Company's Exhibit No. 2.")

By Mr. Williams:

Q. Mr. Sealy, will you please tell us what the item of pre license costs are? I think that figure in the statement was given to the State Tax Commission. Give us the amount of it and tell us what it consists of.

A. The amount of pre-license costs as of December 31, 1927, was $5,800,834.43.

Q. Now, go ahead.

A. This item represents all expenditures made up to the time of the issuance of federal licenses, February 20, 1926, and includes land in both Maryland and Pennsylvania, the acquisition of the capital stock of both Maryland and Pennsylvania corporations; cost of preliminary engineering and [fol. 118] surveying; interest over a considerable period of time; taxes, organization and like expenses were included in this statement.

Q. Was that item part of the $36,000,000 reported to the State Tax Commission?

A. That is included in the $36,000,000, yes.

Q. That has not yet been divided by any of the Governmental commissions, has it?

A. Not that item; no, that item is subject to review and determination by the Commission's having jurisdiction.

Q. Now, Mr. Sealy, you arrive at the investment in Harford County as of the date you named of the items, and you eliminate from that $36,000,000 included in the returns to the State Tax Commission.

A. You want the amounts?

Q. If you can give them, yes, sir.

(Mr. Robinson:) Will you read that question, Mr. Reporter?

(Thereupon, the reporter proceeded with the reading of the record as requested.)

Q. (Mr. Williams:) If you can give us a general idea of the items, speaking of the statement——

(Mr. Robinson:) Now, Mr. Williams——

(Mr. Williams:) You have a copy of the report.

(Mr. Robinson:) Are you asking a new question, Mr. Williams?

(Mr. Williams:) Sir?

(Mr. Robinson:) Are you asking a new question?

(Mr. Williams:) I think it has been fairly well covered.

(Mr. Robinson:) No, but he did not answer the one you put to him before that.

[fol. 119] (Mr. Williams:) I will withdraw that, for the purpose of explaining to him what he wishes.

By Mr. Williams:

Q. Have you a copy of the report to the State Tax Commission?

A. Yes.

Q. Now, you have given us a number of items of tangibles in Harford County. Now, what I want to get at is, without giving you the figures, for you to name the character of the items you eliminated from those contained in the report to the State Tax Commission, in order to reach what you call tangibles in Harford County that you have just read.

A. From the total of $36,000,000 there was eliminated, for the purpose of reaching this figure that has already been described, all items consisting of an intangible character, likewise tangible property in Cecil County.

The intangible items consisted principally of engineering and superintendence, preliminary surveying, cost of organization expenses, interest and taxes during construction, and miscellaneous construction expenditures; cost of relocating the Columbia and Port Deposit Branch of the Pennsylvania Railroad; also relocating the State and County roads and telephone and telegraph lines; certain expenses in connection with the acquisition of land, such as surveying, expenses of recording deeds and document stamps and so forth, have been considered intangible and eliminated.

(Commissioner Weant:) Mr. Sealy, have you those items segregated on a piece of paper you eliminated?

A. We have prepared a statement.

(Commissioner Weant:) Have you got that before you there?

(The Witness:) No, I do not have that before me.

By Mr. Williams:

Q. I would ask you this, Mr. Sealy. There is a whole lot of work that has been done in the City of Havre de Grace,

under your requirements in the city. Have you taken into consideration those items?

A. That was considered intangible and eliminated from [fol. 120] this total in reaching the total tangible property for Harford County.

Q. That work was done on City property?

A. Done on City property and as I understand it, we have no title to that property at the present time.

Q. Then, there were certain donations to certain public institutions that were excluded?

A. Yes, we were required to do some work in connection with the preservation of so-called Picture Rocks and that was included under the intangible items.

Q. What did that amount to?

A. I think the item was $5,000, if my recollection is clear.

Q. Mr. Sealy, were there not certain expenditures required by the Government for hydrographic station? What became of those items?

A. There were no expenditures within the State of Maryland, to my knowledge, for governmental hydrographic station.

Q. Were there any expenditures required by the War Department; and what became of those items?

A. If there were any expenditures they were ignored. They were not thrown out. I haven't any recollection of expenditures in Maryland by the War Department—I have no recollection of expenditures by the Susquehanna Power Company.

(Mr. Howard:) Witness with you.

Cross-examination.

By Mr. Robinson:

Q. Mr. Sealy, did you have anything to do with the books and accounts of The Susquehanna Power Company?

A. I had to do with their books and accounts throughout their entire construction.

Q. What was your particular position and status?

A. Chief accountant.

Q. You were an accountant?

A. Chief accountant, responsible for the accounts over the construction period.

[fol. 121] Q. I see. Then you are testifying as an expert accountant?

A. Yes.

(Mr. Howard:) Having direct charge of the books.

(Mr. Robinson:) All right, let him answer, Mr. Howard.

(The Witness:) Yes, sir.

By Mr. Robinson:

Q. You are an expert accountant?

A. I am termed an expert accountant, yes.

Q. From what date were you the accountant?

A. January, 1926. The exact date of the month I do not recall.

Q. And you kept the books?

A. They were kept under my direction.

Q. Well, I meant you were in charge of the accounts?

A. That is true.

Q. From January, 1926?

A. Yes.

Q. Now, did you have charge of the reports that were made to the State Tax Commission and the Public Service Commission?

A. Of certain reports.

Q. What?

A. Of certain reports, not all of them. That report you have before you, I did not prepare.

Q. Who did?

A. It was prepared by the company, and in our statistical department, but I mean it was not my responsibility.

Q. Well, but you kept the accounts?

A. I kept the accounts and from those accounts this report was prepared.

Q. Well, it is a correct statement?

A. I suspect it is. I suspect that it is signed and certified to by the company.

Q. Yes, it has been. You didn't make this report, but it was made up from the books of the company?

A. That is true.

[fol. 122] Q. Now, you have been talking about the report for the year ended December 31, 1927?

A. Pardon me, what was that?

Q. You have been discussing the report of your expenses for the year 1927?

A. I have been discussing figures that were submitted to the State Tax Commission, and those same figures will appear in the report that was submitted to the Public Service Commission as of the same date.

Q. Now, was the report to the Public Service Commission—does that report show your expenses there in connection with that project for the year ending December 31, 1928, amounting to $45,797,111.42?

(Mr. Williams:) That is December, 1928. The other is December, 1927.

By Mr. Robinson:

Q. I am asking him, Mr. Williams, as of December, 1928.

A. You said that for the year. That is—pardon me—that is for the end of the period. That is true, not for the year, not during that twelve-month period.

Q. I am talking about for the year ended December 31, 1928. You claim to have expended $45,797,111.42?

(Mr. Howard:) For that year?

(Mr. Robinson:) Oh, no; in the entire project.

(The Witness:) In the entire project as of that date. That represents the total expenditure.

(Mr. Howard:) That is to say, that is what The Susquehanna Power Company's property, the development of it, had cost.

(The Witness:) Up to that time.

(Mr. Howard:) Up to that time.

(The Witness:) Yes.

[fol. 123] (Mr. Howard:) And it cost some more after that?

(The Witness:) There has been something added to it since that date.

By Mr. Robinson:

Q. So that the total expenditure is now over $45,000,000?

A. Whatever has been spent since that time. It is relatively a small amount. I don't know what it is.

Q. You don't know what it is?

A. No.

Q. You keep the books?

A. I don't keep those figures in my head all the time.

(Mr. Price:) He does not keep the books in his pocket.

By Mr. Robinson:

Q. It has been a relatively small amount since the first of November, 1928, hasn't it?

A. Yes; it hasn't been materially increased. There has been an adjustment on our books.

Q. I am talking of expenditures, not bookkeeping?

A. Well, my answer is there has been some additions since November, 1928.

Q. In Harford County?

A. Well, there may have been something in Harford County, but the expenditures since that date would be principally in Cecil County.

Q. Some aprons that you put on, and something of that kind, and all in Cecil County, was it not?

A. I don't know as to that. I think part of the expenditures have been in Harford County.

Q. You mean, then, a new one was put on since November?

A. Well, I only know of one, which we speak of as the concrete apron, and I would have to check up with the engineers to find out the exact location of that apron, with reference to the location of the county lines.

Q. Don't you know that that is on the Harford County side and that the apron was built with the dam?

(Mr. Archer:) At the same time.

[fol. 124] By Mr. Robinson:

Q. Yes, that they went up together.

A. I don't know that.

Q. You were only the bookkeeper?

A. I have been keeping the books, I have been down to the plant there, but I don't know what that is classified as.

Q. How often have you been to the plant?

A. Oh, not very frequently.

Q. How often were you there since 1926?

A. Oh, twenty times, perhaps.

Q. Twenty times you have been there since 1926?

A. Yes.

Q. So that you are testifying entirely from figures that are furnished you?

A. Exactly.

Q. And the figures that are furnished you are put on the books?

A. Yes.

Q. Now, did you keep an account of tangibles and intangibles in this account you made and kept?

A. We did not have any such designation on our books.

Q. I thought not?

A. But, we did have——

Q. (Interposing:) Was there any such designation?

(Mr. Williams:) One minute. Let him finish his answer.

(The Witness:) We did have a detail of our accounts, underlying this statement, that was furnished to the Tax Commission that is more descriptive than this statement.

Q. Where are your accounts; have you got them here?

A. No, they are in Philadelphia.

Q. Well, I will ask you if any or all of your accounts indicate to you, the bookkeeper, who had been there twenty times in the last three years, what were tangibles and what were intangibles?

A. Yes.

[fol. 125] Q. On your books?

A. Yes.

Q. You say now that they do. I thought you said that they didn't?

A. I say the books and records.

Q. I asked you on the books that you kept, whether there was anything to show what was tangible and what was intangible?

A. I believe that my answer was that we did not have any such particular designation on our books.

Q. Can't you say yes or no?

(Mr. Howard:) He is entitled to explain.

(Mr. Williams:) He is entitled to make an explanation.

By Mr. Robinson:

Q. You can answer that question and explain afterwards.

(Mr. Howard:) He is entitled to make an explanation.

(Mr. Robinson:) He can answer that question yes or no and explain afterwards. You know that he would have to do that in any court. I have asked him a question that is susceptible of a yes or no answer.

The question was whether or not you had any account on your books.

A. The question was whether we had any account on our books called tangibles and intangibles?

Q. Yes, sir; showing the tangibles and intangibles of The Susquehanna Power Company.

(Mr. Howard:) I think that question is improper.

(Mr. Robinson:) Mr. Howard, I am perfectly right in insisting upon the witness answering.

(Mr. Howard:) But, you are putting two questions to him.

[fol. 126] (Mr. Robinson:) No, I am not.

(The Witness:) I don't see how I can give a yes or no answer to that. Our books and records——

By Mr. Robinson:

Q. Did you keep anything besides books?

A. Books and records. All of our records, our records, in connection with this.

Q. Do you know what the books are? You are the bookkeeper?

A. Yes.

Q. Do you know how you kept your accounts, showing this property, on the basis of $45,000,000? Is that a bookkeeping account?

A. Yes.

Q. Well, then, does that show what is tangible and what is intangible, or tangibles and what intangibles go to make up the $45,000,000?

A. Our records underlying that will show that.

Q. Did you keep those records?

A. Yes.

Q. What kind of records?

A. Various forms of reports.

Q. Reports?

A. Reports and statements that were prepared and furnished to us.

Q. By whom?

A. The contractors that built this plant; Stone & Webster.

Q. Well, would you be kind enough to answer my question. You kept the books. Do your books show it? Can you answer that question?

(Mr. Williams:) I think that he has answered that.

(Mr. Robinson:) No, he has not answered it.

(Mr. Williams:) I think that he has.

(The Witness:) I said that our books and records combined will yield the information.

[fol. 127] By Mr. Robinson:

Q. I am not talking about what will yield the information. I want to know whether the accounts that you kept show it. I have got a right to that answer. I respectfully submit, yes or no.

A. I will answer that there is no account in our books that specifically designates tangible as against intangible capital.

Q. All right. Didn't you——

(Mr. Howard:) Let him finish.

(The Witness:) If you will permit me, I might say that we kept our accounts in accordance with the requirements of the Public Service Commission, and following such requirements we are not required to differentiate between tangible and intangible properties.

By Mr. Robinson:

Q. Now, then, in your report to the Public Service Commission, you make no distinction between tangibles and intangibles, do you?

A. No, we do not.

Q. No?

A. The Public Service Commission's classification makes no such distinction.

Q. In your report to the County Commissioners of Harford County, do you make any distinction between tangibles and intangibles?

A. I don't know just what is meant by our report to the Harford County Commissioners.

Q. Have you got a copy of it there? There is nothing in this statement about tangible and intangible property, is there?

A. There is in an exhibit that is in the record.

Q. Yes, which you filed this morning, which I don't think I have seen yet. When did you work it out?

A. Within a short time.

Q. What?

A. Very recently.

Q. Well, I mean, can you give us some idea?

A. Well, within the past ten days.

[fol. 128] Q. Did you do it?

A. Did it with my assistants.

Q. Who assisted you?

A. I was entirely responsible for it.

Q. I did not mean that, sir, but, I meant, who did it?

(Mr. Howard:) You mean who actually did the work?

(The Witness:) I did not actually do all of this work. I did not do all of it myself. I did some of it, and I had some of it done for me.

By Mr. Robinson:

Q. Do you know what an intangible is?

A. I think I do.

Q. Do you know what it is in there?

A. In connection with this fixed capital, it would include such items as organization expense, interest during construction, engineering and superintendence.

Q. What?

A. Engineering and superintendence, preliminary surveys, studies in connection with it to determine the feasibility of the project.

Q. Isn't that necessary for the development of any tremendous power plant like this?

A. Such a study is undoubtedly necessary for a project of this magnitude.

Q. Why did you say it is intangible?

A. I say that it does not add to the value of the real estate, expenditures made for such studies.

Q. That is what you call intangible, is it?

A. Yes, sir.

Q. Isn't an intangible something that is not necessary in the reproduction of that property?

A. Not necessarily.

Q. Well, why do you say that? Will you answer the question, Mr. Sealy?

(Mr. Howard): I think that he has answered it. I don't think that that answer calls for any explanation. He said [fol. 129] not necessarily so. I think that that is a fair answer to the question.

(Mr. Robinson:) Do you want to answer for him, Mr. Howard?

(Mr. Howard:) I ask you if you think that is fair.

(Mr. Robinson:) I want to know something about this man's knowledge of the thing he is talking about.

(The Witness): Certain items have been excluded here as classified as intangible.

By Mr. Robinson:

Q. Now, what are they? For example, how much, in dollars and cents, are the intangibles in the $45,000,000?

A. I don't know, because no study has been made as of that date.

Q. Well, as of that date, you made a study, within a very recent time, you say, with some help?

A. That is true, but I was not studying that period. I was studying the prior period.

Q. Well, do you know when this assessment was made?

A. Yes.

Q. When?

A. The assessment was made in October, 1928.

Q. Yes, and you didn't pay any attention to the records existing at that time?

(Mr. Howard:) He has filed an exhibit which shows it.

(The Witness:) That exhibit was based upon figures that were furnished to the State Tax Commission, based, in part, at least upon figures furnished to the State Tax Commission as of December 31, 1927.

(Mr. Robinson:) Well, you refused to furnish anything else, is the only reason. Now, you have $36,000,000?

(Mr. Williams:) Mr. Robinson, we did not refuse to furnish anything else.

[fol. 130] (Mr. MacNabb:) Just failed.

(Mr. Williams:) We have furnished everything that has been asked for, and you put the question afterwards, and we have answered it.

(Mr. MacNabb:) There has only been one questionnaire sent out, and that has never been answered at all.

(Mr. Williams:) I think that we have answered everything that has been put to us.

(Mr. MacNabb:) No, sir.

By Mr. Robinson:

Q. Let me ask you this, Mr. Sealy. You filed a report made for the year 1927, which amount you fixed in your report then as $36,460,000, without giving the odd dollars and cents; what part of that $36,000,000 is intangible? Can't you, without looking at somebody else's figures, tell me?

A. My recollection—I can't give all of these figures from my head. I want to look at my own statements.

(Mr. Howard:) He is entitled to look at his own statements.

(The Witness:) I am not looking at anybody else's.

By Mr. Robinson:

Q. Go ahead.

(Mr. Howard:) He is entitled to look at his own statements.

(The Witness:) The intangible part of the $36,000,000 is $12,814,000, plus some undeterminate part of prelicense, I think, amounting to $5,800,000.

By Mr. Robinson:

Q. Who decided that?

A. Decided what?

Q. That that was intangible?

A. Which item is intangible?

Q. The one you just stated?

A. $12,800,000.

[fol. 131] Q. You just stated it. I asked the amount, your total money or costs. I asked you who had decided that was intangible property?

A. Myself and associates.

Q. Who were your associates?

A. The engineers. I had the benefit of their experience.

Q. Tell me who they were. This isn't your report. It is evidently gotten up by somebody else. Now, who are the people that worked it out?

A. Mr. Roux contributed.

Q. Mr. Roux?

A. Mr. Roux.

Q. Who else?

A. Mr. Roux and myself worked this statement out.

Q. You and Mr. Roux worked it out?

A. Yes.

Q. Nobody else?

A. No.

Q. I see. And, your figure aggregates $12,000,000 of intangibles in that $36,000,000?

A. That is right.

Q. What was your objection; why didn't you prepare a tabel as you have done in this statement as of October, 1928, when this assessment was made?

(Mr. Howard:) I think, perhaps, you are overlooking, Mr. Robinson, that there have been filed two exhibits, one showing the calculation as of January 1st, and the other showing what it was at that time for the very thing that you are mentioning.

(Mr. Robinson:) Well, I have asked to see them, but I have not had the opportunity as yet. Where is it?

(Mr. Howard:) They have been filed.

By Mr. Robinson:

Q. What was the figure used as the basis when you made your calculation in October, 1928?

A. I made no calculation in October, 1928.

(Mr. Archer:) That is what we thought. Mr. Howard said you had.

[fol. 132] (The Witness:) We filed two statements this morning showing the tangible property as of December 31, 1927, and September 30, 1928.

By Mr. Robinson:

Q. After September 30, 1928, what figure did you use?

A. I used our investment as of September 30, 1928.

Q. What was it? Now, I think if you have filed exhibits, I would like to see them.

(The Witness:) That does not show our investment.

Q. What are you now reading from?

A. These are the working papers that I used in connection with the preparation of these exhibits. The intangible fixed capital as of September 30, 1928, amounts to $16,280,320.

Q. And, what was the basis of the investment at the time you made that?

A. $45,511,171.

Q. $45,511,172?

A. Yes.

Q. Then you estimate that the tangible property was worth $29,230,000?

A. No, that is not true. The intangible is $16,000,000, plus some undeterminate part of the pre-license cost amounting to $5,800,000.

(Mr. Archer:) You said $12,000,000 before.

(The Witness:) That is as of December 31, 1927.

By Mr. Robinson:

Q. How long did it take to make this investigation?

A. I have been working on this some time. I don't know just how long it took.

Q. Well, can you give me some idea?

A. Well, I have been concerned with it——

Q. Not concerned. I am not talking about the time that you were concerned about it. I am talking about the time you spent in determining the difference between the tangible and intangible property up there?

A. Well, it is a matter of months.

[fol. 133] Q. Well, was it ten months, or one?

A. Well, more than one. It was nearer ten.

Q. Gave your whole time to it?

A. No, I didn't give all of my time to it.

Q. Mr. Sealy, you got this information from Mr. Roux, then, didn't you?

A. A great deal of information.

Q. As to what was tangible and intangible?

A. A great deal.

Q. You do not pretend to be an expert on that, do you?

A. I said I was an expert accountant.

Q. That is all. I thought so. And not an expert on what is tangible or intangible. He is an expert figurer on what is intangible, isn't he?

A. He will have to answer for himself.

Q. He will have to answer for himself?

A. Mr. Roux will have to answer that question.

(Mr. Roux:) I object to any reflection on my character.

(Mr. Robinson:) I don't think that is a very serious one on your character, Mr. Roux.

By Mr. Robinson:

Q. Do you figure intangible property when you come to figure the value of your property for the purpose of rate-making purposes?

A. Yes.

Q. You figured that all in?

A. Yes.

Q. Now, how much—you don't know the pre-license expenditures, do you, as intangibles?

A. I say that with respect to pre-license there is an indeterminate amount, I say, as between tangibles and intangibles.

Q. What part was tangible, and what part intangible?

A. That is an undeterminate amount. We cannot tell you.

Q. Nobody can tell?

A. A valuation would have to be made. We can tell you.

[fol. 134] Q. What are your figures based on, if you can tell us what the basis of your figures are?

A. I say that the records were incomplete with respect to that pre-license cost. We do not have the records, I say.

Q. What did you do with them?

A. I know—I said both tangibles and intangibles.

Q. Of the $5,000,000, which you say is both tangible and intangible, how much is tangible and how much is intangible?

A. That I can't answer.

Q. Well, didn't you put something in your schedule about it?

A. Yes, and I have labeled it that way, that tangible and intangible amounts to $5,000,000.

Q. That is very illuminating, I imag-ne, tangible and intangible, $5,000,000?

By Mr. Williams:

Q. That is normally called pre-license cost.

By Mr. Robinson:

Q. Now, in your report to the State Tax Commission under date of January 1, 1928, you make, you start out there with a statement of the physical property in Maryland as of January 1, 1928. Now, is physical property intangible?

A. No.

Q. It is not?

A. No. I would like to correct your statement, Mr. Robinson.

Q. I am reading from the report made by your company?

A. And that report shows on page 4 those costs, items, precisely how these figures are made up. This statement of the physical property is the question, is Question No. 17, which we are attempting to answer. Question No. 17 appears in the State Tax Commission's capital stock return.

(Mr. MacNabb:) The answer says, on physical property, in the State of Maryland, that you are answering at the top of the page.

A. No, it says at the top of the page of our answer, it [fol. 135] says: "Charges applicable to the period prior to February 20, 1926, to the end of December."

Q. Now, you are reading Question No. 17?

A. Question 17 is quoted then a part of it from the Maryland State Tax Commission.

Q. 17—Which paper? That is The Susquehanna Power Company, and this says, Statement of physical property in Maryland, January 1, 1928.

A. I do not understand that The Susquehanna Power Company handed that to the Tax Commission.

(Mr. Robinson:) It is on file with the State Tax Commission.

(The Witness:) It may be, but I don't understand that the Power Company filed that with the Tax Commission.

(Mr. Robinson:) You don't?

(The Witness:) It may be so. We did not file that with the State Tax Commission.

(Mr. MacNabb:) The statement you have been going over this morning, Mr. Sealy, is identical with the report to which is appended a letter signed by W. E. Long, treasurer, addressed to J. Enos Ray, Chairman, State Tax Commission of Maryland. This is in connection with the tax assessment in Harford County, and data for the County Commissioners, and this says at the top, "Supplemental statement in answer to Question 17 of the Annual Report filed by the Susquehanna Power Company as of January 1, 1928.

"17—Statement of physical property in Maryland as of January 1, 1928."

And, that is the question that Mr. Robinson referred to.

(The Witness:) That may be confusing, but that 17 is question 17, and it is the language that appears in the report on the form of the Capital Stock Tax Report of our Tax Commission.

[fol. 136] (Mr. MacNabb:) Well, this is a statement of the present physical property in Maryland, that is where we get our figures, our information.

(The Witness:) A description appears on each account, which is made for the purpose of clarifying that.

(Mr. MacNabb:) But, we did not have anything of that sort. That is the only thing we ever got.

(The Witness:) An explanation appears under each account, there, Mr. McNabb, and on page 4 you will see some language there stating how those figures were prepared, and stating what they are, and what the property consists of.

(Mr. MacNabb:) What do you mean, these lines here?

(The Witness:) That is where it is.

(Mr. McNabb:) There is nothing there on page 4. If you can find anything there, I want you to refer to it on page 4.

(The Witness:) Following page 4.

(Mr. MacNabb:) We do not have anything following page 4.

(Mr. Roux:) You will find it——

(Mr. Robinson:) Mr. Roux, you will have an opportunity to testify. We want this witness to answer this.

(The Witness:) There is a letter to Commissioner Ray, and a statement here to Mr. Ray, which is an explanatory statement carried over Mr. Long's signature.

(Mr. MacNabb:) Well, that letter, is on the first page, that you refer to.

(The Witness:) No, I refer to a further statement of the company.

[fol. 137] (Mr. MacNabb:) Well, we did not get that. That is all that you handed us.

By Mr. Robinson:

Q. You, as bookkeeper of this company, don't know what goes to make up the tangible or intangible property, or how much it ought to be. You simply handle this as bookkeeper. You said that Mr. Roux told you?

A. Is your question whether or not I am qualified to classify all items of tangible and intangible property? I think I am qualified to classify them.

Q. I did not ask you anything about your classification. I will ask the stenographer to read the question. I said, as bookkeeper, there was nothing on your books to show anything about this. You got your information from Mr. Roux, as to what is the intangible and what is the tangible property?

A. I said that——

Q. (Interposing:) Well, did you or did you not?

A. I said that I worked it out in conjunction with Mr. Roux, and I say that our records will yield the information which would permit classification as tangible and intangible property.

Q. You got most of your information from Mr. Roux?

(Mr. Howard:) He has not said that.

(The Witness:) No, I don't think I said that.

(Mr. Robinson:) Mr. Howard says that you didn't, but we all recollect that you did. Is that a fact?

(Mr. Howard:) When you say "we," who do you mean?

(Mr. Robinson:) Is that a fact or not?

(The Witness:) That I got most of my information from Mr. Roux?

(Mr. Robinson:) On tangible and intangibles.

(The Witness:) Well, I don't know whether that is so or not. I know——

[fol. 138] (Mr. Robinson:) That is all.

(The Witness:) I don't know whether I got most of it. I know that I got much of it from Mr. Roux.

(Mr. Robinson:) That is all. We don't want anything else.

(Mr. Williams:) Well, he should be permitted to finish his answer.

(The Witness:) I worked along with Mr. Roux in the development of these intangibles over a considerable period of time.

(Mr. Robinson:) That is all, sir.

Redirect examination.

By Mr. Howard:

Q. As I understand, you said that you had a number of others help you with this other than Mr. Roux?

(Mr. Robinson:) He said that he had no one but Mr. Roux.

(Mr. Howard:) Did you have other members of the force?

(Mr. Williams:) Yes; he had other engineers to furnish him information.

(Mr. Robinson:) But, he said he had no one else.

(Mr. Howard:) Well, let us see what the record says.

(Mr. MacNabb:) Yes; let us find out what he has said.

(Mr. Williams:) Can't we go ahead with our examination, Mr. Williams?

(Mr. Williams:) Yes.

By Mr. Howard:

Q. Who was in charge in preparing these exhibits, you or Mr. Roux?

A. Mr. Roux was in charge of making the allocation as [fol. 139] between tangible and intangible.

Q. Q. And, you are the accountant?

A. I took care of the accounting part of it.

Q. Now, all of this data that you worked on is available on the books and the records underlying the books for the company, isn't it?

A. Yes.

Q. Where that was taken from?

A. From those, and some of that is a matter of judgment as to some of those figures in certain cases.

Q. Now, in reference to this question of the way in which pre-license costs are treated in your exhibit that you filed, included in those pre-license costs are certain items of actual cost of land, isn't there?

A. Yes.

(Mr. Robinson:) Now, may I ask what you are going to go into?

(Mr. Archer:) There is no dispute about that, is there?

(Mr. Robinson:) I don't think so.

(Mr. Howard:) I want to ask that question. I am not going to go into that question at length. I only want to know what about the land. I do not want to take up the time of the Board about the unimportant issues.

By Mr. Howard:

Q. Now, in your statement you have treated lands separately, by taking the tax assessment as the basis for the bare land, haven't you?

A. That is true.

Q. You have not gone into the cost of the land itself?

A. No.

Q. Is it, or is it not true, that in your two exhibits that you have filed, you have included such land as is included in the pre-license cost, or you haven't included it at cost, but you have included it at the tax list?

A. We assumed all land at the assessed rate, yes.

Q. So that the land itself was included in your pre-[fol.140] license cost at the cost of the land you have included in your statement, by putting all land in on the assessment basis?

A. At the assessment figure, yes.

Q. In so far as the land is included in the pre-license cost, you have included that land at this figure, haven't you?

A. Yes.

Q. And, are there any other items that amount to anything besides land in the pre-license costs that are of a tangible character?

A. No.

Q. So that in that way, then, you did take care of the tangible investments that were included in the pre-license costs?

A. Yes. That would be a consideration to the tangible part, pre-license.

Q. Pre-license costs include also that unallocated item of pre-license costs, investments, includes lands outside of Maryland, does it not?

A. Yes.

(Mr. Robinson:) I think really that you ought to let the witness testify.

(Mr. Howard:) I wanted to save time.

(Mr. Robinson:) I do not think that you ought to put the witness in the position where he has to say yes and no to your questions.

(Mr. Howard:) All right, sir. I am afraid we are going to be here quite a long time.

(Mr. Robinson:) Maybe so, sir. We want to get through as quickly as we can, but we want to do it according to the rules.

(Mr. Williams:) Do you have any further questions?

(Mr. Robinson:) Yes, I want to ask a question.

Recross-examination:

Q. That is to say, your books only show, on this pre-license value of your real estate, it is carried on your books at cost?

A. It is carried on our books at cost.

[fol. 141] Q. What did it cost?

A. We have one account, this pre-license, on our books, which represents the figure that was on the books at the time we acquired the company and——

Q. What is it?

A. It represents expenditures.

Q. I am talking about the amount?

(Mr. Williams:) The amount.

(The Witness:) In the neighborhood of $5,800,000.

(Mr. Howard:) That is pre-license cost?

(The Witness:) No, sir.

(Mr. Robinson:) I am asking about that, Mr. Howard.

(Mr. Howard:) But, I wanted to make it clear what he said.

(Mr. Robinson:) Can't he do it?

(Mr. Howard:) Yes.

By Mr. Robinson:

Q. You say you put it down on your books at the price at which it was assessed, and not at the price at which it was purchased?

(Mr. Howard): Not on the books, but on our statements.

(The Witness:) Not on my books. I did not put it on my books at the assessed figure. It is included in this exhibit.

By Mr. Robinson:

Q. Which is very much less than the cost price?

A. I don't know what the cost price was.

Q. You don't?

A. No. I don't know what the cost price of the land was.

Q. Don't your books show?

A. I don't know what the cost price of the pre-license land was.

[fol. 142] Q. Your books don't show that?

A. No, they do not show that. They show one account which includes all expenditures up to the date of the issuance of the license, including land and many other things that I have previously described.

Q. Why did you say just now it was all land?

A. Well, if I did, I misstated it.

Q. How much was land, as shown on your books? Can you bring your books here showing what the pre-license cost was?

A. That book could be brought here. It is not here. It is not in the room.

Q. Is it in the city of Beltimore?

A. No.

Q. Where is it?

A. It is in the city of Philadelphia.

(Mr. Robinson:) That is all.

Redirect examination.

By Mr. Howard:

Q. Mr. Sealy, what fixes the way in which your books are kept, and the different headings and items are incorporated?

A. The regulatory commissions having jurisdiction.

(Mr. Robinson:) What?

(The Witness:) The regulatory commissions having jurisdiction.

By Mr. Howard:

Q. Such as the Federal Power Commission and the Public Service Commission of the State of Maryland?

A. And the Public Service Commission of the State of Maryland.

Q. Yes.

A. The State of Maryland has issued regulations prescribing the classification of accounts to be used by companies such as ours, and our books are kept in accordance with that classification.

(Mr. Howard:) That is all.

[fol. 143] (Mr. Robinson:) That is all.

(Witness excused.)

(Mr. Williams:) I will call Mr. George Roux.

(Mr. Robinson:) What time are you going to adjourn for lunch?

(The Chairman:) It is now ten minutes of one o'clock. Do you gentlemen want to go on now, or would you like to have lunch now? We will leave it to you.

(Mr. Howard:) Suppose we have lunch, and then we can go on again. How long does the Commission generally adjourn for lunch?

(The Chairman:) Until 1:30, is that all right?

(Mr. Robinson:) Couldn't we make it a little bit longer?

(The Chairman:) Make it until two o'clock.

(The Chairman:) Then we will adjourn until two o'clock.

(Thereupon, at 12:50 o'clock p. m., a recess was taken until two o'clock p. m. on the same day.)

After Recess

Thereupon GEORGE P. ROUX, a witness of lawful age, produced on behalf of The Susquehanna Power Company, having been duly sworn, testified as follows:

Direct examination.

By Mr. Howard:

Q. Mr. Roux, in what capacity are you connected with The Susquehanna Power Company and its allies?

A. I am an engineer of The Susquehanna Power Company.

[fol. 144] Q. And where are you located most of the time?

A. When I am not in the State of Maryland I am in the State of Pennsylvania, and mostly in Philadelphia.

Q. But are you ever up at Conowingo, and have you been up at the dam during the period of construction?

A. Yes, sir.

Q. How often?

A. Almost every day.

Q. Almost every day?

A. Yes, sir.

Q. Have you held this position during the entire building of the works that have been constructed on this project at Conowingo?

A. Yes.

Q. You say you are an engineer?

A. Yes.

Q. Well, just what is your position. A company might have twenty engineers, but I want to give the Commission an idea of what your duties have been?

A. I am an engineer of the old school, born and educated in France.

Q. I am coming to that in a moment, but your connection with the company, what is your title and what are your duties?

A. I absolutely have no title at all. I am a free lance in the company.

Q. You are what?

A. A free lance in the company.

Q. A free lance with the company?

A. Yes, sir.

Q. And you have been its engineer?

A. Yes, sir.

Q. Had you anything specially to do with the construction of these works up at Conowingo, or the investigation of it or anything?

A. I spent four years of my life in the Conowingo project, since 1922 until today—six years of my life.

Q. That is what I want to come to?

A. And I had a great deal to do with the lay-out of the original plan of the Conowingo project, and I might say that the Conowingo project has been constructed on recommendations that were made in 1925 by me.

[fol. 145] Q. Tell the Commission briefly what your training or experience as an engineer has been. In the first place, I think you are a native of Belgium, are you not?

A. No, sir, I am not.

Q. You are not?

A. I am a native of France.

Q. I do not know where I got that impression?

A. Well, you got the wrong impression.

Q. It was not your accent, I assure you. Now, tell the Commission what your training as an engineer has been and what experience you have had before you came with the Susquehanna Power Company?

A. I have had thirty-five years' experience along engineering lines, along railroad construction and operation, public utilities, gas, water, coal, electric light and power transportation, survey, mining work, and miscellaneous other things that come under the caption of engineer in general, and this is due to the fact that in my days of engineering, an engineer had to undergo an examination in every one of these items, including architecture. There was no specialization.

Q. You say for six years you have been with the Susquehanna Power Company?

A. I wouldn't say for six years I was with the Susquehanna Power Company, but I have been with it since the Susquehanna Power Company has been acquired by the Philadelphia interests.

Q. By the Philadelphia Electric Company?

A. Before that I was in the Philadelphia Electric Company and assigned to the Conowingo project, and located at Conowingo for four years.

Q. Now, Mr. Sealy testified that you collaborated with him in the preparation of the data, part of which he submitted to the Commission, in which there was an attempt to segregate from the capital investment as reported to the Public Service Commission, and as carried on the books of the company, in accordance with Public Service Commission requirements, an attempt to segregate from that what part was properly eligible as cost of land and cost of improvements, and what part he called intangible expenditures, is that true?

A. It is true.

[fol. 146] Q. Was your work based on the accounts and records of the company?

A. I secured all possible information and data on the source of the expenditure made from voucher items, payrolls, bills for materials, quantities and everything else, as far as I could.

Q. Commissioner Weant asked if we had the work sheets on which that was based. I will ask you if you have the full study and investigation that you made in your allocation of the investment in fixed capital in this way—have you got it with you?

A. I got a copy here, yes, sir.

(Mr. Archer:) A copy of what?

(Mr. Howard:) A complete copy of his analysis and study that he and Mr. Sealy made of these items.

Q. Will you explain that briefly to the Commission, Mr. Roux? Let me get this clear first of all again; if I understand it, this is your analysis of the items that go to make up that account for the purpose of allotting them to what went to improvements, to real estate, or the acquisition of real estate, and what did not go to that kind of a purpose, is that right?

A. Well, this is merely taking the account as it appeared in the books of the Susquehanna Power Company.

Q. As of what date?

A. As of September 30th, 1928, in so far as each investment in fixed capital is concerned.

Q. Explain those pages and figures to the Commission, briefly.

A. At that time, as of September 30th, 1928, the total fixed capital account of the Susquehanna Power Company amounted to $45,511,172. I am giving you the round figures, omitting the cents. This total of forty-five million, et cetera, classified according to the requirements of the Public Service Commission of Maryland represents the investment of the Susquehanna Power Company, as we claim it is. I want to say at this time that the investment of the Susquehanna Power Company, the legitimate investment of the Susquehanna Power Company, is not as yet determined.

Q. Why is that?

A. Because it is subject to revision, checking, and allow- [fol. 147] ance by the Public Service Commission of Pennsylvania, the one in Maryland, and the Federal Power Commission.

Q. In other words, this really represents the company's claim of all it has spent, and which it claims to the Public Service Commissions that the project has cost the company?

A. I would not say it is a claim, but it appears on the books, which, of course, is subject to adjustment, allocation, transfer of accounts, and it is in process, just like a business firm would be—it works on that basis—to be definitely separated to any particular thing. It may be a credit or it may be a charge.

(Mr. Archer:) A credit and charge?

A. I did not say "credit and charge," I said, "It may be a credit or a charge." Now, this total amount of forty-five million dollars et cetera—the pages are not numbered,

(Mr. Howard:) That occurs on the second page.

A. Well, they are not numbered. The pages are not numbered, but it is forty-five million dollars—I will segregate briefly, but we will go into detail later on—I will segregate it briefly into a total tangible of $23,430,017.

Q. The items of that are shown on the first page, aren't they?

A. Yes, segregated, distributed, between Harford and Cecil Counties. The item of intangible fixed capital, the

expenditures are $16,280,320, omitting the cents. In addition to that, there is an item of $5,800,834, of so-called pre-license cost, which is not as yet allocated, or divided between Pennsylvania and Maryland, and, in turn, between tangible and intangible. This item of $5,900,000 may be—$5,800,000, may be accepted or it may be increased or it may be decreased. It is subject to revision and discussion again with the three political bodies that I have referred to already.

Now, then, on the following pages we have on one, two, three, four pages, the detail of the $45,000,000 allocated between Harford and Cecil Counties, again divided between [fol. 148] tangible and intangible. Now, then, on the extension sheets that follow——

Q. Now, what is the difference between these plain sheets and what you call these extension sheets?

A. The extensions sheets are the ones I am going to talk about, to give you the whole story.

By Mr. Robinson:

Q. Which one of the extension sheets?

A. The third page of the extension sheets.

(Mr. Archer:) What is the number of it?

A. It has no number on it. The second page of the extension sheets.

(Mr. MacNabb:) The stenographer can not hear you.

A. I am just explaining to these people that do not understand anything. I want you to follow me, gentlemen.

(Mr. MacNabb:) Pre-license, that is?

(Mr. Howard:) The one with the pre-license at the top?

A. Yes. If you have a better copy of it than this let me have it, because I can not read this one very well. Pre-license cost of four million——

Q. Five million?

A. Yes, five million eight hundred thousand, et cetera—I beg your pardon, I will get that out in this way. In this summary there is another column, under the caption of tangible property, which is divided between Harford and Cecil Counties, and the third column is the total of Harford and Cecil Counties.

(Mr. MacNabb:) You are now going back a page.

A. Those people never can follow me.

(Mr. Robinson:) Well, you come over here and say that was not the page you were reading from.

[fol. 149] A. The fourth column is headed, intangible fixed capital, and the last column gives the total investment. The first item we have is the pre-license for the reason given before.

(The Stenographer:) What is that?

(The Witness:) May be I will be allowed to testify in French if he can not understand me—for the reason that we have given before, this is intangible—we consider it as intangible—because we do not know what allowance or what disposition is going to be made of it, you understand.

By Mr. MacNabb:

Q. When you do not know what a thing is, it is intangible, is that it?

A. No, I beg your pardon. I do not say that at all. Here is an item which has a question mark, so, therefore, we can not classify either in Harford or Cecil or Pennsylvania and Maryland, and we can not tell you how much of that $5,800,000 is going to be recognized in the first place, and, in the second place, when it is recognized, how much will be land, real estate, or anything which we may call tangible property, or whether it is going to be intangible. We can not tell you that. The organization expense—I call that intangible. It don't reflect at all in the value of the property, or the value of the pool, or the fair market value of anything, in so far as the Conowingo project is concerned.

Mr. Howard:

Q. The nature of the items that make up that are indicated in the description there, aren't they?

A. Yes. Now, at this time, so that we can all understand what we are talking about, in going through the books of the company and segregating the various accounts into this fourth column, in view of answering what you expert gentlemen have been preparing——

Q. In other words, those are the items that were included in that calculation?

A. Without any guesswork at all, yes.
Q. That were made by the experts for the company
A. Without any guesswork.

[fol. 150] (Mr. Robinson:) You copied from them?

A. Copied from our books.

(Mr. Archer:) I do not want to interrupt you, but for that basis they only have your original figures of something over $36,000,000 to figure on. You have refused to give them anything except what they had gotten from the Public Service Reports of January 1, 1928, on which they could base those figures?

A. No, sir; I deny that.
Q. Your company refused, then?
A. I deny that.
Q. I deny it?
A. I represented the company and acted for and on behalf of the company and I deny that. We gave the Commissioner of Harford County the information that they requested, which was specific, and for which a foundation could be given. Previous to that, we received a letter incorporating in the neighborhood of forty-five or fifty questions, that not a soul living or dead could answer.

Now, the next item, account 216, land, the Public Service Commission of Maryland don't give a rap whether it is real estate or whether it is not. They want to know what fixed capital we claim that we have expended in a certain thing. That thing here is the land, and they say to us, "You charge to this account the cost of the land owned by the utility, and we can locate it as structures and equipment used in generating electricity——

Q. Are charge orders like that, that appear through here, copied from the instructions of the Commission?

A. Copied from the suggestion of the Public Service Commission of Maryland. Furthermore, as this was very indefinite, we were instructed from time to time, by authority of the Federal Power Commission, or their agents, to charge into this 216 account all of the items——

(Mr. Robinson:) Was that in writing?

A. No, sir; they come to us every once in a while and they sat down with us for weeks, and they go through

[fol. 151] every doggoned voucher, and everything we have, and they say, "You will do this and you will do that, and you will do the other," and the week after somebody else comes along and says, "No, that is all wrong, you do it the other way."

(Mr. MacNabb:) That is a pretty valuable commission?

A. Yes; it is. They have the authority to tell you to do as they say as you go along, just like a lawyer has. Now, let us come down to business, because we will never get out of this room if you ask me foolish questions.

(Mr. MacNabb:) Isn't this business?

A. Yes. I know you are going to ask what is tangible and what is intangible, and I am prepared to answer you.

(Mr. Robinson:) I have not asked you anything.

A. I know, but you are going to ask me and I will tell you right now. I just want you to know what we change to land, we charge everything we are told to.

By Mr. Robinson:

Q. If a fellow told you one day to do one thing and the next day said it was all wrong, to do the other thing, which do you follow?

A. What do you do when a cop on the street tells you to turn around to the other street?

Q. What do you follow?

A. We follow what the cop tells us. Don't forget, we are an agent and instrumentality of Congress, so we have got to follow what Congress says.

(Mr. MacNabb:) Are you swearing to that, is that part of your oath?

A. What?

Q. That statement you just made?

A. That we are an instrumentality?

Q. That is part of your oath, isn't it?

A. Yes; it is my firm belief.

[fol. 152] By Mr. Howard:

Q. Don't you think we will make a little more progress if you interrupt him less?

(The Witness:) That is just what I say. We have an item there, we cover the actual purchase price paid for land acquired by the company up to February 20th, 1926, amounting in Harford County to a hundred and seventy thousand, and Cecil County you do not care about, a total of $285,910. That is tangible, that is a perfectly tangible item.

Q. Did you pay the ordinary market price or did you pay more than the ordinary market price for the land?

A. In a project of this nature you are always expected to pay a great deal more than the fair value of the market price of the land.

Q. Well, did you pay that?

A. Yes; in most occasions we had to because we could not get any other land on the river, and it was not a question of choice. That was the very land we had to get, and therefore, in a number of cases, we were skinned.

Q. This whole statement is on a cost basis?

A. It is actual money paid out, as per voucher that can support these entries. The other one is exactly the same thing, but subsequent to February 20th, 1926. That amounts to $59,062, land that we acquired for the relocation of the Columbia and Port Deposit Railroad. It is my opinion that this is entirely an intangible account in that it has absolutely nothing to do with the tangible values of the land necessary and used by the project. We also purchased riparian rights amounting to $6,080. Then, on the land that we intended to flood, we proceeded to sell buildings and any improvements that was on the land, which gave us a credit of $6,777, making a total of $436,000 for this item 216.

Q. Mr. Roux, I think it will take a great deal of time to have you go over every item and explain it, when most of them speak for themselves?

A. I do not think I need to go all the way through this.

Q. Suppose you take some large item as an instance. For instance, a great deal has been said about the cost [fol. 153] of relocating that railroad around there. Whose railroad was that?

A. That railroad?

Q. What railroad was it?

A. Columbia and Port Deposit Railroad.

Q. It is not owned by The Susquehanna Power Company in any *may*?

A. No, sir.

Q. What you paid there was the expense of moving the railroad away from the proposed pool?

A. Yes, the same as we had to move roads and build new highways, and do other things like that, which these gentlemen finally agreed was intangible, so far as the assessment is concerned—was out of the assessment.

Q. The only thing it left you was with the benefit of their having been moved away?

A. Yes.

Q. How much was that item?

A. This item here is $3,554,730.

(Mr. Robinson:) Where is that?

A. Now, here again, in spending that money, we spent a great deal more than we should have, and the reason is that the Pennsylvania Railroad and the P. B. & W. Railroad asked us to do certain work for them while we were at it, and they would compensate us for it when the work is finished. The work is not quite finished, as there is some work to be done in Port Deposit, which will reduce this amount, whatever it is. What they asked us to do, for instance, was in reference to rails and grading, capacity and greater width, and general improvements for the benefit of the country at large and the public in particular. So, therefore, this amount, as I said before, $45,000,000, is what happened as of that date, subject to adjustment, subject to credits or charges when the entire work or the entire project is completed, and the final accounting will be made.

Now, under this item of land, we paid landowners for damages, damages that were caused, they claimed, by fire due to lomocotives, which does not affect at all the value [fol. 154] of the real estate. So, therefore, we say it is not tangible and should not be taken into account in the assessment. Then we had expenditures in reference to county bridge and the relocation of the roads. Now, then, right there the counties, or the County Commissioner, had an old dilapidated bridge built about 300 years ago, a wooden bridge falling to pieces. These gentlemen that are now objecting to our assessment and want to raise it to the rising sun and put us in the poorhouse, were very nice at that

time. They said: "Why, sure, anything you want, we will do everything for you." They were going to put there a State highway bridge that you couldn't get to unless you would go in a flying machine, because there was no road to the bridge, but the bridge was there——

(Mr. Robinson:) Do you want all of this as testimony, Mr. Howard?

(The Witness:) I want to explain what this is, why we have got here an item of $310,000 which the county obligated us to spend when there was absolutely no need for it.

(Mr. Robinson:) But you flooded all of the roads and the bridge?

A. No, I didn't flood all of the roads. As a matter of fact, there was no road there.

(Mr. Robinson:) Mr. Howard, you are not contending that the contract you made about changing these roads is something that is wrong now? Are you contending that?

(Mr. Howard:) I think we will argue the case, Mr. Robinson, when we come to the argument. If you ask me my opinion on that, we are not contending that anything that we did was wrong, but we are contending that the expenditures that we were compelled to make in that way are not proper elements to be assessed against us as a basis for taxation. That is the real object, as I understand it, of this investigation. We will argue the case at the end, Mr. Roux.

[fol. 155] A. The next item here, that we have here, is $310,000 spent for the relocation of the State road approach to the dam, on each side of the dam. We got a refund from the State Roads Commission of $23,000 because they asked us to provide a road wider than we had in the contract, and they came across and paid us $23,000. Then, the bed of the river that we were going to flood, it was immaterial to us, we were ready to flood it, but there were trees in it and the authorities came along and said: "Clean the bed of the river, it has got a lot of trees in it." That expenditure was never anticipated by us, so, therefore, it is an expenditure which, in so far as the operation of Conowingo project is concerned, that has nothing to do with the operation, nor would have interfered with it, and it is simply for the suggestion of the Forestry Department that we did it.

(Mr. MacNabb:) How much is that item?
A. $96,053.

By Mr. Howard:

Q. It is not necessary for us to have you repeat each of these items because you have filed this statement and you vouch for its accuracy?
A. All right.
Q. Let me ask you this question: Was much of this work done in a rush manner or not, or was it done with the economies that come from having adequate time in which to do it?
A. Why, it was done in an orderly way, but we got all of the pressure that we could on the work and there was absolutely no time lost, there was no lost motion, and no money, not a cent was gone to waste.
Q. I notice an item in one or two places there of unwatering or unflooding—explain what that is?
A. Where is that?
Q. I think it occurs in more than one place, "unwatering coffer dams", and similar items?
A. Among the items that make up our investment in account 221, you find an item there of $270,019, which represents the actual expense in connection with unwatering the work after an unexpected flood that happened during construction of certain portions, and a second one that happened a few weeks later. This is an expenditure which had never been anticipated, which we never anticipated, and it [fol. 156] might be classified as a fire destroying the whole thing, or an earthquake has washed away the whole work. Now, the Public Service Commission, for the purpose of rate-making and a return on the investment, will admit any expenditure originating previous to the earthquake.
Q. In other words, it allowed you to capitalize that misfortune?
A. It allowed us all of those contingencies that were incidental to an act of God or the enemy.

By Mr. MacNabb:

Q. Do you class that as tangible or intangible?

A. This is in the claim of intangible. Here is a little item of $74,585. We did not have to at all spend that money. We did it for the benefit of Harford County and the State of Maryland, in grading at the plant and along the highways and beautifying the place so that you gentlemen may have it and see it in going by and paying us a visit and visiting the plant and taking your friends there. In other words, this is a civic improvement, this is for the civic organization, for the benefit of the public in general that we have done that.

(The Chairman:) Which item is that?

A. $74,000.

(Mr. MacNabb:) Does that include your purification of the water plant?

A. Where is that?

Q. This amount you are just talking about, does that $74,000 include the water plant you put in there?

A. Yes.

By Mr. Howard:

Q. Now, coming back to the first two pages, which represent a summary of all of that, don't they, the net result of the entire exhibit you hold in your hand?

A. Wait a minute, I would like to tell the Commission something else which has a great deal to do with it. The Conowingo project, as you know, is a work of such magnitude that we may say that, at the present time, if the last four units were installed, would be the largest in the world. That project has been going back and forth for twenty or for twenty-five years and nobody could do anything with it [fol. 157] until finally we got hold of it and circumstances were such that we were in a position to make a dream come true, and we did it. In doing it, however, we had to take into consideration that we were dealing with a problem of unusual difficulties. We were dealing with a river which flowed from practically nothing to a flood tide, which was unusual, and in addition to that, we had certain ice gorges, known all over the world, of the Susquehanna river, and had other conditions to meet, all of which had to be taken into consideration for various purposes, the two most important were, first, to make a design, the result of a preliminary study of all possible conditions that could

arise, both during construction and afterwards during operation, so that the people, the investors that put their money in the bonds, that put their money in the preferred stock, would be protected in so far as the principal on their investment was concerned. Second, we were confronted with the necessity of supplying a large system like the Philadelphia Electric Company system, although we also supplied Cecil County and a part of Harford County locally, and we had to provide all possible means for stability of the system, continuity of service, reliability of service. In other words, it was not merely a question of turning the water on the wheel and letting it go, and if something fails in the transmission line, then you gentlemen would not have any light, because we are not in the same class as a railroad where there would be a delay of only 100 or 150 people for a couple of hours, but here we would have a proposition of two million people to serve and an interruption in that service, either in the production, transformation of the water into electricity and its transmission—you can realize how important it is—so that we were compelled, for the sake of the public service, to make extensive investigation, extensive research. We had to send an engineer expert across the continent and investigate all the transmission lines operating at the voltage, or as near the voltage that we operate, which is new in this section of the country, on the eastern coast of the United States, 220,000 volts. We had to anticipate meeting a climatic condition that we do not have in other sections of the country. We had to provide for continuity of service, and we had to provide also for the protective appliances [fol. 158] so that nothing may happen, that is to say, so far as human intelligence, human skill, may provide. We, therefore, went through all the situations that might confront us during the progress and operation. We had also to make models of the transmission line in order to determine the most suitable—we had to make a research into and models of the whole transmission line, to avoid accident, to see what was going to happen, in order to remedy it before it would happen. As to the turbines, we had to do the same thing. We had the largest turbine in existence at that time, 55,000. We were looking for the efficiency of this turbine under operating conditions and we had

small models and that was tested at Holyoke, Massachusetts. We made special research of this ice condition of the river, and went all the way up the river and down the river in order to find out what would happen to our operation in case of an ice formation. We had to make a special test of steel, when you realize the shaft of this turbine is that much in diameter—we had to make special tests, we had to take X-rays of those things and go into all kinds of expense for research and things like that.

By Mr. Howard:

Q. And all those expenses are included?

A. Well, they do not reflect on the transmission line, they do not reflect on the turbines, they do not reflect anywhere at all. It is the cost of developing the project. When you come to think that the first electric refrigerator that was put on the market cost two million dollars, do you know of any housewife that would pay two million dollars for the first electric refrigerator? The cost was two million dollars for that one, but when you take your mass production, you can amortize this two million dollars on a long term production and mass production. We did not build the Conowingo project for a day—we do not build one every day, we had to make plans and study the thing from A to Z, and there is the cost of the development, which is a legitimate investment of the company, and that cost of development reflects absolutely in no way in this tangible cost. We had to go into the detail of the project from A to Z——

(Mr. Robinson:) I thought you said we would argue it after the testimony was in, Mr. Howard?

[fol. 159] (Mr. Howard:) Well, I hope we will, but I am very glad to have some of our troubles cleared away.

(The Witness:) When I swore on the Bible I was going to tell the truth, I did not intend to waive any of my constitutional rights. I am telling the truth and nothing but the truth in my way.

By Mr. Howard:

Q. Let me come now to another thing. I want to ask you for some data about this pool. Have you your notes giving that?

A. No; I haven't that with me.

Q. Use these figures. You made them, I believe. What is the length of this pool? A. Now, you are giving me a question—in Maryland?

Q. What proportion of the length of it lies in Pennsylvania and what proportion of the length of it lies in Maryland, from the dam up?

(Mr. Robinson:) You can read it as well as he can, Mr. Howard?

A. I am getting old. I cannot see that. The length of the pond in Pennsylvania is 42,560 feet, lineal feet, and in Maryland, 28,740, which is a total of 71,300, and in the ratio of 59.7 per cent. in Pennsylvania and 40.3 per cent. in Maryland.

By Mr. Howard:

Q. So that about 59 per cent. in length is in Pennsylvania and about 41 per cent. is in Maryland?

A. Right.

Q. How about the area of the pool?

A. The area of the pond is 9,116 acres, of which 35 per cent. is in Maryland and 64 in Pennsylvania.

Q. Sixty-four per cent. of the area is in Pennsylvania?

A. Yes.

(Mr. McNabb:) Where is the other one per cent.

A. It is 35 per cent in Maryland.

[fol. 160] By Mr. Howard:

Q. How much of the head that you have at the dam is developed—that is, how much of it arises in Maryland and how much is above the Maryland line?

A. It is 50-50.

Q. That is about 50-50. How about the drainage basin, how much is in Pennsylvania and what percentage in Maryland?

A. You go further than that.

Q. Then how much is Pennsylvania and New York on the one hand, and how much is Maryland on the other?

A. Thirty-three thousand square miles in Pennsylvania and New York State, 65 square miles in Maryland.

Q. That is one-fifth of one per cent., isn't it?

A. That is to say, it is two-tenths of one per cent. in Maryland.

Q. What is the total assessed real estate in Harford County, including and not including this proposed assessment?

(Mr. Robinson:) We object to that. It has no bearing on this question.

(Mr. Howard:) I think it has some bearing. They are figures the Commission has in its records any way.

(Mr. Robinson:) The total assessment in Harford County would not be pertinent to this.

(Mr. Howard:) In view of the fact that those are figures of record with the Commission, that we can refer to in argument any way, I won't press the question.

(Mr. Robinson:) Did I understand you to say that you withdrew the question?

(Mr. Howard:) Yes; I withdraw it.

(Mr. Robinson:) The question is withdrawn, gentlemen.

By Mr. Howard:

Q. Mr. Roux, to what extent is the installation complete there at the dam, to what extent is it in any sense incomplete?

A. The dam itself at the present time, so far as we know, [fol. 161] is complete, unless experience demonstrates that some additional work is to be done later. The power plant structure for seven units is complete.

Q. You mean the building?

A. The power plant structure, the building and foundation. The foundation for four additional units is also in, but the building is not erected, neither is the machinery installed. The railroad to Havre de Grace is completed—the relocation of the Columbia and Port Deposit Railroad is not completed. I do not know of anything else.

(Mr. Williams:) What is the depth of the pool?

A. At the dam?

Q. At the dam and as you come back?

A. At the dam the depth of the pool is about 90 feet—not everywhere, but about 90 feet.

Q. Have you any idea how deep it is at the State line?

A. About 58 feet. I say, in places 58 feet, but I don't say everywhere.

(Mr. Howard:) That is the channel depth, you mean, or is that the average?

A. That is about the maximum depth at the State line.

(The Chairman:) How far is it from the dam to the State line?

A. About six miles.

Q. Six miles?

A. Yes, sir.

Q. Then you have a depth of 58 feet six miles from the dam?

A. The bed of the river is about 58 feet below the middle of the pond at that place. That is the maximum depth. Of course, I can not certify that that is correct, but to the best of my recollection it is.

(Mr. Robinson:) You back practically up to the tail-race of the Homewood Dam?

[fol. 162] A. Yes.

Q. Your dam backs the water practically to the tail-race of that Homewood Dam?

A. That is right.

(Mr. Williams:) The Chairman asked you the length of the pool in Maryland.

(The Chairman:) He answered that.

(Mr. MacNabb:) I thought you said it was 28,740 feet?

(Mr. Howard:) That would be about six miles.

(Mr. MacNabb:) No, about five and a half.

(The Witness:) Five and half *feet*, yes. I am giving you round numbers as near as I recall them.

(The Chairman:) That is all right.

(Mr. Howard:) That is all.

Cross-examination.

By Mr. Robinson:

Q. Mr. Eglin was the engineer in charge of the construction of that work?

A. Chief engineer.

Q. Mr. Anthony was the chief engineer for Stone & Webster, who built the dam?

A. No. He was engineer detailed by Stone & Webster on the work.

Q. Well?

A. He was not the chief engineer.

Q. Eglin was the chief engineer?

A. Mr. Eglin was the chief engineer of The Susquehanna Power Company.

Q. Yes?

A. But the contractor had no chief engineer there.

Q. Had you anything to do with the construction work?

A. Who?

Q. You?

A. Yes, sir.

[fol 163] Q. What?

A. Well, I was visiting there constantly and consulted in connection with the construction. The contractor was doing the actual work.

Q. Well, you know what I mean by the engineer in charge of construction. Were you the engineer in charge of construction?

A. No.

Q. I thought you would say no.

A. No, I was not.

Q. Now, you spoke of that pre-license item there. How much is that? $5,800,000?

A. That is right.

Q. Wasn't that practically all real estate?

A. Oh, no, no, sir; not at all.

Q. Before they got a license from the Federal Government, what real estate did they own?

A. They owned real estate in Maryland and Pennsylvania.

Q. I say so.

A. But that was not $5,800,000.

Q. How much was it?

A. I can't tell you.

Q. If you can't tell us, why do you say it was not $5,800,000?

A. It was not for the reason that there is quite a lot of other items that go in there, a power company, a water power company, an electric-lighting company, other utilities in a going concern are part of this legal expense, taxes and interest.

Q. Have you figured out what they have amounted to?

A. No, sir.

Q. Then you are just guessing at it?

A. When the three commissions had been sitting with us for two or three weeks, they threw their hands up and said: "We will have to think it over and discuss that later." So I have absolutely no recollection and cannot tell you how much land it is and how much is for the other items.

Q. Did not the Susquehanna Power people testify at Harrisburg before the Public Service Commission that all of this pre-license expense was absolutely necessary for the development of this enterprise?

[fol. 164] A. I was not in Harrisburg.

Q. You were not there and never heard of it. In Philadelphia, did you hear—do you hear me now, Mr. Roux?

A. What is it?

Q. Was it in Philadelphia, did they testify to it there?

A. I do not know. I never heard any testimony of that kind. I wasn't there.

Q. You never heard any such testimony?

By Mr. Archer:

Q. Did you hear the statement made by Mr. Mason before the joint hearings of the Federal Water Board and the Public Service Commissions of Pennsylvania and Maryland in reference to those items?

A. No, sir; I wasn't there.

Q. You were not present?

A. No.

(Mr. Howard:) They may have been necessary expenses, but it doesn't follow they were real estate.

A. I was not at those hearings.

By Mr. Robinson:

Q. Isn't this investment you have made down there worth the $45,000,000 that you have spent on it?

(Mr. Howard:) The investment he made in what? Let us get that clear. Do you mean the real estate?

A. Wait a minute, let me hear that again.

(Mr. Robinson:) Didn't you hear it? Sit down and I will make you hear it.

(Mr. Howard:) May it please your Honor, I object to the question anyway, because I have not asked the witness for his opinion of the value, which would have been objected to if I had. This is not a question before the Commission.

(Mr. Robinson:) He has gone through it.

[fol. 165] (Mr. Howard:) Gone through the costs.

(Mr. Robinson:) He has arbitrarily allocated what is intangible and what is tangible, so he must know something about the value.

(Mr. Howard:) That doesn't follow. Suppose he does? I have not asked him about it.

(Mr. Robinson:) I would like, with the permission of the Commission, to ask him whether or not he thinks The Susquehanna Power Company's expenditure of $45,000,000 was well spent, and whether the property is well worth that. That is the real thing we are here to determine.

(Mr. Howard:) In the first place, you have put two questions, you ask him whether it was well spent and, in the second place, you ask him whether the property was worth it. What do you mean by the property?

(The Chairman:) The Commission thinks that question is not necessary. We think the question is improper because the value of this $45,000,000 includes personal property and real estate, and this gentleman has not qualified as an expert on value.

(Mr. Robinson:) That is all, sir.

(Mr. Howard:) I would like to offer in evidence the exhibit that Mr. Roux produced and has testified from.

(Paper marked, "Power Company Exhibit No. 3".)

(Examination of the witness concluded.)

Thereupon EDWARD M. ALLEN, a witness of lawful age, produced on behalf of the Susquehanna Power Company, having been duly sworn, testified as follows:

Direct examination

By Mr. Williams:

Q. Where do you live?

A. Darlington, Maryland.

[fol. 166] Q. How long have you been living there?

A. For upwards of fifty years, fifty years and upwards.

Q. Please tell the Commission what your several occupations have been, when you became engaged in business up to the present time?

A. When I was seventeen I was in the canning business.

Q. Where?

A. In Harford County. I stayed there two years, and then I went to Stafford, which is on the river, in 1883, and I stayed there until 1898, and was appointed then treasurer of Harford County, and I was reelected treasurer until 1902. In 1902 my brother and I went to West Virginia in the lumber business. We bought a plant at Mill Creek, West Virginia, of 10,000 acres, built a plant there. In 1906 we bought another lumber company of 6,500 acres, which was a going concern, and we operated that. In 1909 we bought the Laurel Mill and Lumber Company, a going concern, on the Laurel River in West Virginia, of 23,000 acres. In 1916 we bought a lumber company in the southern part of West Virginia of 35,000 acres, but during all of this time I lived at Darlington in Harford County.

Q. Were you ever engaged in business at Glencoe, Maryland?

A. In 1887, with C. Horton Smith, at Glencoe, three-quarters of a mile below the Conowingo Bridge.

Q. Were you ever in business at Conowingo, Cecil County?

A. I was in business there when it was taken over by the power company.

Q. How long were you in those two occupations?

A. From 1887 and stayed there until 1890, and in the meantime I operated also on the river.

Q. What experience have you had in actual values of land along the river in Harford County?

A. I have owned most of the land that the power company owns, or a great deal of it.

Q. How about land in Cecil County?

A. I haven't had much experience in Cecil County, but I have seen the land along there.

[fol. 167] (Mr. Williams:) I want to introduce in evidence this assessment of lands in Harford County adjoining or near the land of The Susquehanna Power Company above the dam.

A. Harford County?
Q. Yes?
A. Harford County.

(Mr. Williams:) I want to introduce it now because I want to ask the witness some questions about it.

(Paper marked, "Power Company Exhibit No. 4".)

(Mr. Robinson:) We do not think that this will throw any light on the question before the Commission.

(Mr. Howard:) One of our grounds of appeal is that we are unequally assessed, and this shows the land that adjoins us and its assessment.

(Mr. Archer:) Our grounds of objection are, if the Court will look at the assessment, first: the land that is not flooded is assessed at the regular price as the surrounding land and all of the property, under the rules land down by the State Tax Commission. As far as this project is concerned, it is an entirely different proposition from any surrounding farmlands. Now, they have taken a whole lot of references to little pieces of property that people own in that neighborhood.

(Mr. Robinson:) It was not necessary for anything of this kind.

(Mr. Archer:) It was not necessary and not used for this, and the assessments there are simply for the farmlands. Now, as far as their waste land and their farmland above the pool is concerned, we have simply assessed them at the regular county rates. We have assessed the land under the pool, the land in the pool, at a higher rate on the same theory that a reservoir or something like that is assessed. It has an increased value by reason of its location, but all of these properties that they are submitting here in [fol. 168] this list of Mr. Allen's are little farms and houses and lots that people own. We certainly do not think it is admissible.

(Mr. Williams:) These are mostly adjoining lands, and we propose to show how they are assessed, and we have on the list how our lands are assessed. We want to show the assessment because it will readily appear when that is shown that our percentage is much higher. That is the purpose for which we offer it, and we think this witness is qualified to put the values on this land.

(Mr. Archer:) We admit that we did not assess this at farm values.

(The Chairman:) The Commission will allow this to go in, subject to our decision later as to its relevancy.

(Thereupon, the document above referred to was received in evidence and marked "Power Company's Exhibit No. 4".)

By Mr. Williams:

Q. Mr. Allen, I hand you this paper, marked "Power Company's Exhibit No. 4," and I will ask you to look over those lists there and state whether or not you are acquainted with them all. Kindly look through them.

(Mr. Robinson:) Would you mind letting me hear that question?

(Mr. Howard:) He asked him to look over those lists.

(The Witness:) I do not know this particular bunch here, because there are a number of names that are left off of there. There must be some mistake and some of them have been left off. That is down here on this page (indicating).

By Mr. Williams:

Q. All of those are lands of Sidney Cooper. They ran from this point (indicating) over to here (indicating). They all belong to Sidney Cooper. He just simply has enough to take a whole page.

A. Yes, sir; I know them all.

[fol. 169] Q. Now, Mr. Allen, I am going to ask you to take them one by one and tell the Commission what, in your opinion, is a fair sale value of those lands, naming over each of them. As you do so, will you please kindly mark each one with a lead pencil.

(Mr. MacNabb:) I do not think that Mr. Allen has qualified as an expert on values.

(Mr. Robinson:) I don't think so, either.

(Mr. Williams:) I thought that I had asked him sufficient questions, and that he did so.

(Mr. Archer:) We do not think he is qualified.

(Mr. Howard:) Outside of the time that he was engaged in his operations in West Virginia, he said he had been there all of his life. He was born there. He says that he

lives there, and that he is familiar with the land, and that he has bought a great many of these pieces of land.

(Mr. Archer:) Not these.

(Mr. Howard:) That he has bought a number of pieces of land for the Power Company, as I understood him to say.

(Mr. MacNabb:) Immediately adjacent to this?

(Mr. Williams:) Yes, he has bought land there.

(Mr. Robinson:) You mean he bought it for the Power Company?

(The Witness:) Bought it for the Continental Trust Company.

(Mr. Robinson:) He was not buying it for himself. He was acting for the Company.

(Mr. Howard:) How could he be better qualified to express an opinion as to the value of that property? He has [fol. 170] been engaged in buying that property, and he knows the property.

(Mr. Williams:) And since 1925 he has been in the real estate business, too.

(The Witness:) Yes, since 1925 I have been in the real estate business.

(Mr. Robinson:) Has Mr. Allen told us that he has bought the adjacent land?

(Mr. Williams:) I have not asked him that. He said that he had bought and sold land there. I think that he is sufficiently acquainted with this property to express an opinion as to the value of it. I want to ask him to express his opinion as to the value of each of these parcels.

(Mr. Archer:) I do not see how he has been qualified to do that. He said that he had bought some of that land there. He has purchased land for the Power Company. He has not shown that he is qualified to testify as to the value of each one of these pieces of property, regardless of its cost, or what the Power Company paid for it.

(Mr. Williams:) We can argue that later.

(Commissioner Weant:) Mr. Williams stated that he is offering this for this purpose, of showing the comparative value of flooded and unflooded land and for the purpose of comparing the assessment on other lands with the value of other lands, and show there is no disproportion between the assessment on this flooded land, with this value, and the

assessment of other property of the same character. I think that he may bring him within that rule.

(Mr. MacNabb:) But, how does that affect this question of this property, as to the value of this property for the purpose for which it is used?

(Mr. Howard:) Well, we have indicated that, and we [fol. 171] want to frame the question along the lines as suggested by the Commissioner.

(Mr. Robinson:) Yes, but the Court of Appeals has stated that the value of adjoining property had very little to do with the question.

(Mr. Howard:) That is not the purpose for which this is offered.

(Mr. Archer:) You will find the assessment——

(Mr. Howard:) The only thing about it, may it please your Honors, this property is similar to some of the property that has been flooded, and this property is similar to property that belongs to the Power Company and it may be that in this way we can get a little nearer to what it is worth, show that it is worth about the same.

(Mr. Robinson:) We do not think that this is proper.

(Mr. Howard:) We do not think that you can assess flooded property at 100 per cent. of its value, and then assess unflooded property for sixty per cent.

(Mr. Robinson:) Then, if you do not think that, you differ with all of the courts. That is all I have to say.

(Mr. Williams:) We can argue that question later.

(Commissioner Weant:) As I understand his contention, General, it is this. Is not this your proposition, you say that you cannot assess one kind of land at one hundred per cent. of its value, and another kind of land at 60 per cent. of its value?

(Mr. Howard:) Yes, your Honor.

(Mr. Robinson:) I say that you can, and the courts say that you can.

(Mr. Williams:) We can argue that when we come to it later, Mr. Robinson.

[fol. 172] (Mr. Robinson:) The courts have said that you can do that. It was said in the Northern Central Railroad Company case right here in Baltimore.

(Commissioner Weant:) But, that is not the same question that we have here.

(Mr. Robinson:) Yes, I think it is.

(Commissioner Weant:) He is speaking now of other values. Suppose that we say for the sake of argument that this flooded land is worth $10,000 an acre and unflooded land is worth $100,000 an acre.

(Mr. Robinson:) Yes, sir.

(Commissioner Weant:) You have no right to assess the unflooded land at sixty dollars an acre and the flooded land at $8,000. Isn't that your point?

(Mr. Williams:) That is the point.

(After informal discussion off the record.)

By Mr. Williams:

Q. Now, will you take this list, which I hand you, and just go over it——

(Mr. Archer:) We do not admit that Mr. Allen has been qualified as an expert.

(The Chairman:) If you gentlemen wish to cross-examine him, you may do that and determine whether he is qualified.

(Mr. McNabb:) We do not think that he has been properly qualified.

(The Chairman:) I mean, you may cross-examine him as to his qualifications before he gives his opinion as to any of these values.

(Mr. Archer:) It is our contention that he has not been qualified in any way.

(Mr. Robinson:) We do not think that there is any testi- [fol. 173] mony before the court as to his qualifications, and we think that it is up to the gentlemen who produce a witness to qualify him.

(Mr. Howard:) He says that he has been a real estate agent for the last year or two, and he has testified that he has had considerable experience in buying lands, and has lived in Harford County all of his life, except during the time that he was conducting these operations in West Virginia, and that he then had his home in Harford County, and has been in this neighborhood and is familiar with every piece of property in it. He has owned land.

(Mr. Archer:) Mr. Allen has owned this land? He said that he had bought it as agent for the appellants. And

now he is an agent, and he bought this land for the appellant. That certainly does not qualify him.

(The Witness:) I did not buy it for the power company.

(Mr. Archer:) You bought it as agent, bought it up for the holding company, and that, as a matter of fact, was a part of the pre-license expense we heard about here this morning.

(The Witness:) I did not do anything of the kind.

(Mr. Robinson:) You said that you bought it for the Continental.

(The Witness:) I bought it for the Continental Trust Company, and I bought some of it on my own account. And I bought this particular piece of property, including a property at the mouth of Deer Creek, and there were two pieces of property there sold to the power company, one piece to the Conowingo.

(Mr. Archer:) If Mr. Allen bought this as a speculation, knowing that this project was going to locate here, then sold it later at a largely increased price to these people for this dam, I certainly should not consider the price that he sold that for as establishing the price, fair market value of this land, and I should not think that it should be considered [fol. 174] for assessment purposes. That certainly does not qualify him.

(The Witness:) I would like to say this——

(Mr. Archer:) I simply say that his qualifications are based on his dealings in this land, that he bought and then sold to this company for this project, I do not think that his testimony is competent.

(The Court:) We will take his testimony.

By Mr. Williams:

Q. Go ahead.

A. You want me to take this list and just go right over it here?

Q. Take this list that I hand you, and give us the values, your estimate of the value of the land.

A. You want the taxable value and then the assessment?

Q. No, you need not read that. That speaks for itself.

(Mr. Howard:) That is all right, if you want to give it.

(Mr. Williams:) That is given on that paper.

(The Witness:) You don't want me to read this here (indicating).

By Mr. Williams:

Q. If you think it is necessary.

A. Well, Sidney Cooper, 60 acres of tillable land at $40 an acre, $2,400; 20 acres at $30 an acre, $600, and 102 acres of timber at $10 an acre, $1,020; dwelling, $200; barn, $1,500; other buildings, $200; making a total of $5,920.

Q. What do you give the assessed value there?

A. I am giving the assessment.

(Mr. Williams:) That is the assessment.

(The Witness:) My value of that would be $8,000. I am going to state, too, that the assessments in Harford County are very regular, and I think very good.

(Mr. Robinson:) What was that?

[fol. 175] (Mr. Williams:) Regular.

(The Witness:) And very good.

By Mr. Williams:

Q. What do you mean by regular?

(The Witness:) I mean that wooded land is always assessed at $10 an acre and rocky hillsides are never assessed at anything that I have ever seen, and I have taken the lists, one hundred lists, and checked them, and have never found a rocky hillside assessed at anything.

(Mr. MacNabb:) You mean to say that they are not assessed in Harford County?

(The Witness:) They are not assessed as rocky hill sides. (James Kehoe): 105 acres of tillable land at $40 an acre, $4,200; 2 acres of wooded land at $10 an acre; dwelling, $800, barn, $725; other buildings, $300; total, $6,045. I should think that the farm is worth $8,000. (Nelson G. Rowan): 68 acres of tillable land at $40 an acre; 22 acres of standing pasture at $20 an acre; 20 acres of wooded land at $10 an acre; dwelling, $200; barn, $1,500; other building, $100; making a total of $5,160. I should think that it is worth $7,000. (George W. Brackins): 60 acres of tillable land at $35 an acre, $2,100; 20 acres of standing pasture at $15 an acre, $300; 57 acres of wooded land at $10 an acre, $570; dwelling, $150; barn, $1,500; other buildings, $50;

making a total of $4,670. I should think that the farm is worth $6,500. (John O. Orr): 25 acres of tillable land at $30 an acre, $750; 5-99/100 acres of standing pasture at $20 an acre, $120; 40 acres of wooded land at $10 an acre, $400; dwelling, $300; barn, $100; other buildings, $50; making a total of $1,360. That, I should think, is worth $2,000. (Whaling and Allen): That is myself. 75 acres of land at $20 an acre, $1500. I don't think that there is a foot of tillable land on it. There is not an acre of tillable land on it. It is all wooded land. Then, they have dwelling there, $500; other buildings, $400—that makes a total of $2,400. I think that it is worth $5,000. (Fred C. Jones): 80 acres of tillable land at $45 an acre, $3,600; 10 acres of wooded land at $10 an acre, $100; dwelling, $2,500; barn, $1,000; and other buildings, $1,000; making a total of $8,200; which I should think is worth $10,000. (Mrs. Emily Hamilton): [fol. 176] 40 acres of tillable land at $30 an acre, $1,200; 25 acres of wooded land at $10 an acre, $250; dwelling, $100; barn, $200; other buildings, $150; dwelling No. 2, $300; total, $2,200. I should think that that is worth $3,000. (Mrs. Susan Orr): 17 acres of tillable land at $30 an acre, $510; 23 acres of wooded land at $10 an acre, $230; dwelling, barn and shed, $500, $135, and $40; making a total of $1,415. I should think that that is worth $3,000. (George Orr): 13 acres of tillable land at $25 an acre, $325; buildings, $630; making a total of $955. I would put that at $1,500. (Benjamin H. Blevins): 12 acres of tillable land at $30 an acre, $360; 30 acres of wooded land at $10 an acre, $300; dwelling, $600; barn, $300; making $900, and other buildings, $130; making a total of $1,690. I should put that at $2,000. (Lonnie V. Patrick): 10 acres of tillable land at $35 an acre, making $350; 10 acres of wooded land at $10 an acre, $100; buildings, $525; making a total of $975. I should put that at $1,500. (Claud L. Mast): 30 acres at $35, tillable land, $1,050; 20 acres of pasture at $15, $300; 55 acres of wooded land at $10 an acre, $550; dwelling, $800; barn, $500; other buildings, $150; tenant house, $600; making a total of $3,950. I think that is worth $5,000. (James L. Randow): 1 acre of tillable land at $40; on that, he has a house, that ought to be worth, $500; I mean the house and the tillable acre. (Charles M. Browning): 45 acres of tillable land at $35 an acre, $1,575; 25 acres of pas-

ture at $20, making $500; 86 acres of wooded land at $10, $860; dwelling, $680; barn, $1,000; other buildings, $150; making a total of $4,765. I should think that it is worth $7,000.

(Commissioner Weant:) You are just reading the paper that you are looking at?

(The Witness:) Yes, sir.

(The Chairman:) This property is all adjoining the property under consideration?

(The Witness): Yes, surrounded by all of it.

By Mr. Williams:

Q. This is adjoining the property, isn't it?

A. Yes, sir; above the dam, in Harford County (James Presberry): 2 acres of tillable land at $50 an acre, $100; dwelling, $450; shed, $25; other buildings, $100; making a [fol. 177] total of $675. I think that that is worth $500.

(Mr. Robinson:) Worth how much?

(The Witness:) It is assessed at $675.

(Mr. MacNabb:) That is what it is assessed at.

(The Witness:) (O. W. Love:) 3 acres of tillable land at $25 an acre, $75; 15 acres of wooded land at $10 an acre, $150; dwelling, $1,100; stable, $150; shed, $50; making a total of $1,525. I think that it is worth $2,500. (Morris Ilgenfritz:) 2 acres of tillable land at $25 an acre, $50; 11 acres of wooded land at $10 an acre, $110; dwelling, $500; barn, $230; other buildings, $60; making a total of $950. I think that that is worth $2,000. It would be worth $2,000 with roads up there, but the roads are bad. (Charles H. Webster:) 11½ acres of tillable land at $50 an acre, $575; dwelling and barn, $800; making a total of $1,375. I would put that at $2,500.

(Mr. MacNabb:) $2,500, you said?

(The Witness:) Yes. (Hannah B. Evans:) 29 acres of tillable land at $60 an acre, making $1,740; 16 acres of wooded land at $10; making, $160; dwelling, $2,000; barn, $500; and other buildings, $200; making a total of $4,600. I think that that is worth $15,000.

(Mr. MacNabb:) And it is valued at $4,600.

(The Witness:) $4,600 is right. (Harold A. Jones:) 70 acres of tillable land at $45 an acre, $3,150; 20 acres of

standing pasture at $20, $400; dwelling, $900; barn, $1,200; and other buildings, $100; making a total of $5,750. I thought it was worth $9,000. (William C. L. Eglin:) 100 acres of tillable land, $60, $6,000; 68 acres of pasture land at $25 an acre, $1,700; 10 acres of wooded land at $10 an acre, $100; dwelling, $900; barn, $1,800; other buildings, $1,200; and bungalow, $4,000; making a total of $15,700. I think it is worth twenty.

(Mr. Archer:) That man is vice-president and chief engineer of The Susquehanna Power Company?

[fol. 178] (The Witness:) Yes.

(Mr. Robinson:) And he paid $40,000 for it, and it is now worth $20,000?

(The Witness:) Yes.

(Mr. Robinson:) You think it is worth that?

(The Witness:) Yes.

(Mr. Robinson:) I would not like to give him $20,000 for it. I will take your statement for it, though.

(The Witness:) Louise W. Schenck:) 15 acres of tillable land at $50 an acre, $750; 19 acres of wooded land at $10 an acre, $190; and dwelling, $600; making a total of $1,540. I think that this is worth $4,000.

(Mr. Archer:) That is assessed at $1,540, and you think it is worth $4,000?

(The Witness:) Yes.

(Mr. Archer): We will remember that.

(The Witness:) (James E. Barnes:) 8 acres of tillable land at $25 an acre, $200; 17 acres of wooded land at $10 an acre, $170; buildings, $250; making a total of $620. I think it is worth $800. (Robert Presberry:) 9 acres of tillable land, $30, making $270; buildings, $575; making a total of $845. I think it is worth $750.

(Mr. Archer:) Mr. Allen, you just referred to a piece of property that now belongs to Mr. Roux?

(The Witness:) Yes.

(Mr. Archer:) Who is the gentleman that was just on the witness stand?

(The Witness:) Yes.

(Mr. Archer:) I happened to hear Mr. Roux when he [fol. 179] objected to his assessment before the Board of County Commissioners.

(Mr. Roux:) I never objected to anything, sir.

(Mr. Archer:) For yourself and Mr. * * * both. I was present.

(Mr. Roux:) Not me.

(Mr. Williams:) What is the question?

(Mr. Archer:) I said that I was present in the County Commissioners' meeting when Mr. Roux came in, representing himself and Mr. * * * and objected to an assessment. I say I just happened to remember that.

(Mr. Williams:) You want that put in as evidence, do you?

(Mr. Archer:) Yes, I would like to have that go in.

(Mr. Williams:) Will you take note of that, Mr. Reporter?

By Mr. Williams:

Q. Mr. Allen, in your estimate, did you make any percentage of how the assessments compared with the values?

A. I did. I made an estimate in Harford County, along with the assessments, to see what they had done. I saw Mr. File, and I saw Dr. Carcaud, and I found out what the general idea was.

(Mr. Robinson:) We object to that.

(Mr. MacNabb:) We object to that.

(Mr. Robinson:) Yes, we object to his stating what was said in conferring with somebody.

— Mr. Williams:

Q. In your opinion, what was done?

A. My experience of what was done, I took a number of instances, and I did that for the purpose of figuring out how the assessment compared with the values, and I figured it out and it figured out about 55 to 7 per cent. I have forgotten what it was, of the total value. And then I looked [fol. 180] at the County and State list and it ran from 65 to 70. I believe that it ran from 60 to 70.

(Mr. Robinson:) Of what?

(The Witness:) Of its actual value.

(Mr. Archer:) I saw one piece of property sold recently for $3,000, which was valued at $4,400.

(Mr. Robinson:) You can't get within 30 per cent. of the assessed value, if you want to sell.

(The Witness:) I think you can. Then, I saw a piece of property that was bought for $39,000, sell for $170.

(Mr. Robinson:) Yes, but that had a peculiar value attached to it.

(The Witness:) Yes.

(Mr. Robinson:) You go out in Harford County and try to sell this land, and you will see.

(The Witness:) Yes, they have got some submerged land down there assessed at $1 an acre, and up here it is thirty-one fifty.

(Mr. Robinson:) I don't think that you could get within 30 per cent. of the assessment.

(Mr. Archer:) Mr. Allen, you did not object to your assessment?

(The Witness:) I did the best I could, to get it as low as I could, just like everybody else.

(Mr. Archer:) Did you think that it was not worth what it was assessed?

(The Witness:) I don't remember ever saying that.

(Mr. Archer:) One of the Commissioners just told me that.

[fol. 181] (The Witness:) I don't care what the Commissioner has told you. I have got nine thousand dollars on my house. If that is not in proportion, or if it is beyond proportion, I do not know it.

(Mr. Chairman:) Are you through with Mr. Allen, gentlemen?

(Mr. Williams:) No, not quite.

By Mr. Williams:

Q. Mr. Allen, have you a list of the properties adjoining the lands of the Power Company below the dam?

A. Yes, sir.

Q. Kindly look at your list and read off what you have there, if you are acquainted with all of those lands. Are you acquainted with them?

A. I am very well acquainted with them, because I bought and sold every one of them about.

(The Court:) Are you going to offer that paper in evidence?

(Mr. Williams:) No, sir.

(The Chairman:) If so, I do not see the use of reading it.

By Mr. Williams:

Q. Mr. Allen, you have a list there?

A. Yes, sir.

Q. I thought I had, but I do not seem to find it among my papers. I am going to ask him to read from his list. I will supply a list later, but I am going to ask him to read from his list, as he has done from this, and fix the value. Will you read what you have there?

A. (William J. Shure:) 25 acres of tillable land at $60 an acre; 55 acres of standing pasture at $30 an acre; 15 acres of standing pasture at $20 an acre; 65 acres of wood at $10 an acre, buildings, $7,390, making a total of $11,400. I haven't any figures on that, but I would say off hand that it is probably worth $15,000. (Sarah E. Silver:) 16¾ acres of tillable land at $40 an acre, $670; buildings, $1,350, making a total of $2,020.

[fol. 182] Q. What do you consider the value of that?

A. $2,500.

Q. Now, have you any further assessment figures there?

A. Yes.

Q. Go ahead.

A. (Thomas S. George:) 34 acres of tillable land at $35 an acre and 1½ acres of wood at $10 an acre, buildings, $3,160, making a total of $4,365, which is about right for that. (John E. George:) 50 acres of tillable land at $40 an acre, 15 acres of standing pasture at $20 an acre, 4 acres of wood at $10 an acre, buildings, $2,025; making a total of $4,365. $5,000 would be about right for that. (Eugene Seagle:) 28 acres of tillable land at $40 an acre; buildings, $3,800; making a total of $4,920. That is Dr. Scott's property, which I should place at about $6,750.

(Commissioner Weant:) And what is it given there for?

A. $4,920.

(Commissioner Weant:) And what is it valued at now?

(The Witness:) I thought it was worth about $6,000. Somebody there said that he paid $7,000 for it during the Power construction.

(Mr. Howard:) That is the place that is across from the cemetery?

(The Witness:) Yes. (Roy Thomas:) 94 acres of tillable land at $55 an acre, $5,170; buildings, $3,500; total, $8,670.

(Mr. Howard:) That is the total assessment?

(The Witness:) Yes. He paid $18,000.

(Mr. Archer:) Well, that is not of interest here.

(The Witness:) I don't think it is worth $12,000.

(Mr. Williams:) That is what he paid?

[fol. 183] (The Witness:) That is what he paid.

(Mr. Archer:) What a man paid for a piece of land is not evidence as to its value.

By Mr. Williams:

Q. Now, Mr. Allen——

A. I want to see if I can't find the balance of that property below the dam.

Q. Now, I will ask you if you have the assessment of the Power Company's property adjoining those you have testified to?

A. Belonging to the Power Company?

Q. Belonging to the Power Company?

A. Assessed by the Commissioners at $34,539, 698¾ acres of tillable land, at $50 an acre, making a total of $34,538.

Q. How is the other tillable land in that section shown?

A. I think that the other lands, if roads were built through there,—of course, the other lands there is not very much, there is not very much tillable land there, and there are no roads and it does not amount to anything. I think that $50 is liberal, all right.

Q. Where?

A. Where the roads are.

(Mr. Archer:) Where the roads are?

(The Witness:) For all of it.

(Mr. Archer:) For all of it?

(The Witness:) For all of it.

(Mr. Archer:) You mean the whole thing, for the Power Company, and the whole thing, all of that section of the country?

(The Witness:) I think that is perfectly all right for that, Mr. Archer.

(Mr. MacNabb:) Is there any difference as to the fertility of the land?

[fol. 184] (The Witness:) Except the Power Company had one very fine farm. Now, if you would surround that

land with good roads, that would be different. I think $50 is a proper price.

(Mr. Archer:) $50 is the proper price for that?

(The Witness:) Yes, I think so.

By Mr. Williams:

Q. Go ahead.

A. Rocky hill sides, 569.81 acres, at $20 an acre, $11,396. Those rocky hill sides are hill sides, all of them, absolutely rocks. They would not grow anything, except scrub oak, if you ever got one started. They have got that assessed at $20 by the county, whereas other wooded land in Harford County, all of it, apparently, is assessed at $10 only. That makes $11,396. Wooded land, 882.67 acres, at $30 an acre, would be $26,460, making the total assessment, $72,394, as we found it. This is what we found. In the first place, there is not much tillable land there.

(Mr. MacNabb:) In Harford County?

(The Witness:) Owned by the Power Company. That is all Power Company land. As we found it, we think it should be assessed, 312 acres of tillable land at $50 an acre, $15,600; 378 acres of pasture, at $25 an acre, $9,450; and 1,452½ acres wooded land at $10 an acre, making $14,520, which would make a total assessment of $39,570, instead of $72,394.

Q. That is your judgment?

A. That is my judgment.

(Mr. Archer:) Mr. Allen, didn't the State build a road right through the Shure property that you spoke of? Wasn't there a road built right through that, or around that? It seems to me that there was?

A. That went practically right back of that.

(Mr. Archer:) But, that made it substantially fronting on the road?

(The Witness:) It made the rear of it front on the road, [fol. 185] but there is not any of that that you can cultivate, or run a cultivator over to save your soul. That is there is not any of that would be worth anything except for pasture land.

(Mr. MacNabb:) Do you know what was paid for it?

(The Witness:) I have an idea.

(Mr. Archer:) He paid in the neighborhood of $40,000.

(The Witness:) How much?

(Mr. Archer:) Didn't he pay in the neighborhood of $35,000 or $40,000?

(The Witness:) If you want to know, I can tell you exactly what he did pay for them.

(Mr. Archer:) Well, what did he pay?

(The Witness:) He paid $35,000 for that farm, and the town, Shure's Landing.

(Mr. Archer:) And what did he pay for the Holloway farm?

(The Witness:) The two Shure boys owned the farm, and they—nobody owns the town except themselves and except his sister or a brother, and they thought they would fix the brother, I guess, and so they put it in for $22,000 on the farm, and $13,000 on the town. They fixed that. We did not have anything to do with that.

(Mr. Robinson:) Do you call that a town, two or three old houses, that have tumbled down?

(The Witness:) It was a town once.

(Mr. Robinson:) What did you say?

(The Witness:) Once.

(Mr. Archer:) He said it was a town once.

[fol. 186] (The Witness:) Well, it was a town, when you and I were born, twenty-five or thirty years ago.

(Mr. Robinson:) What sized town was it then?

(The Witness:) Well, that was a town with about fifteen or twenty houses in it.

(Mr. Robinson:) What became of them, Mr. Allen? I am just curious to know what became of those houses.

(The Witness:) What became of them?

(Mr. Robinson:) Yes.

(The Witness:) I think they were torn down and used as warehouses, or machine shops, or something, but they were torn down, and are gone now. They were there once. But, when we were born, that property had only about six or seven houses there and they were fair.

By Mr. Williams

Q. When you refer to that having been a town, you mean back in these canal days?

A. Yes.

Q. And it was a very active place?
A. Yes.
Q. And Mr. Dan Shure was superintendent of the canal, and he made his headquarters there, did he not?
A. Yes.

(Mr. Williams:) Witness with you.

Cross-examination.

By Mr. Robinson:

Q. He was an active superintendent?
A. Yes.

(Mr. Howard:) Mr. Williams was not born yet.
(Commissioner Leser:) The canal goes back to 1873. He is a very young man.
(Mr. Robinson:) That was on the other side of the river.
[fol. 187] (Mr. Archer:) This canal was built in 1848.
(Mr. Williams:) In 1838 or 1839, the canal on this side.

By Mr. Robinson:

Q. How many acres are there in the Holoway Farm?
A. 204 acres.
Q. And what did he pay for it?
A. $41,000.
Q. What do you have it assessed for?
A. I do not know as I have got it here.

(Mr. Archer:) Fifty dollars an acre, I think, on the land.
(The Witness:) I have got it here on a yellow piece of paper, but that is not it. The house burned down on that fellow.
(Mr. Robinson:) I am asking you about that.
(The Witness:) What it is assessed at now?

Q. Yes.
A. What it is assessed at, the Holloway Farm?
Q. Yes.
A. That was tillable land, 185 acres at $40 an acre, pasture land, 25 acres at $20 an acre, and wooded land, 20 acres at $10 an acre.

(Mr. Howard:) Making a total of what?
(The Witness:) $8,100.

(Mr. Howard:) $8,100?

(The Witness:) Yes.

(Mr. Howard: And that was bought for $40,000?

(The Witness:) $40,000, and then they made him a present of $1,000 for his good intentions, I guess. Then, one of the reasons for that was that Mr. Holloway was a very old man and did not want to move away.

[fols. 188-193] By Mr. Williams:

Q. Was what?

A. An old man and did not want to be put out. He had a fire, and he died before he was put out.

By Mr. Robinson:

Q. You have been employed by the Power Company for some time?

A. October, I expect.

Q. Since October of last year?

A. Yes.

Q. You have been working on this particular thing for them?

A. Yes; I have been working for the Power Company on it since 1894.

Q. I was going to say, you had been employed with them for a good many years?

A. Yes.

(Mr. Williams:) But different people?

(The Witness:) Different people, different companies.

(Mr. Robinson:) That is all, Mr. Allen.

(The Witness:) Anything more?

(Mr. Williams:) No, that is all.

(Witness excused.)

(Mr. Williams:) I will call Dr. Carcaud.

* * * * * * *

[fol. 194] EVIDENCE ON BEHALF OF THE COUNTY COMMISSIONERS OF HARFORD COUNTY

(Mr. Howard:) We would like to have the same understanding that the other side spoke of yesterday. We

think the whole theory of the experts of the other side is wrong in this purpose, but we do not want to take up the time of the Commission by excepting right along. It it understood of course that we object to the testimony in its entirety and that, I take it, will be understood without making the objection at every step in the testimony.

(Mr. Robinson:) Yes, without making the objection at every step. We will now call Mr. Gregory.

Thereupon JOHN H. GREGORY, a witness of lawful age, produced on behalf of the County Commissioners of Harford County, having been duly sworn, testified as follows:

Direct examination.

(By Mr. Archer:)

Q. Where do you live?

A. Baltimore.

Q. What is your profession?

A. Consulting engineer.

Q. Are you connected with any institution in Baltimore?

A. I am connected with Johns Hopkins University.

Q. In what capacity?

A. Professor of Civil and Sanitary Engineering in the Engineering School, and in charge of the Civil Engineering Department; I am also in charge of the Sanitary Engineering Department of the School of Hygiene and Public Health of the same University.

Q. What qualifications do you have as an engineer, first, as to educational—preparatory?

A. I graduated at the Massachusetts Institute of Technology in Boston in 1895, and I have been in active practice in engineering since then—the last thirty-four years. [fol. 195] Q. During that time where have you practiced your profession?

A. Well, in the summer of 1893 I was engaged on preliminary surveys in the Metropolitan Sewage Commission in Boston, and in 1894, that summer, I was engaged on the construction of the outfall sewer, about five miles east of Boston Harbor, which runs about 2,000 feet into deep water, and from 1895 to 1897, I was assistant in the designing department in the Metropolitan Water Works in Boston, engaged on the preparation of plans for the Wychus-

setts Aqueduct, and the preliminary design for the Wychussetts dam and reservoir. These works are the main supply works at the present time for the City of Boston and the Metropolitan District. For between two and three years, from 1897 to 1900, I was assistant engineer and resident engineer on the design and construction of the Albany Filtration Works, Water Supply Works at Albany, New York, then for two years, from 1900 to 1902, I was with the City of Philadelphia as assistant engineer in charge of designs on the improvement, installation and filtration of the water supply, had charge of the designs of the first four filtering plants which were built by the City of Philadelphia, the preliminary plans for the Lardners Point Pumping Station, and one or two smaller pumping stations, the Oplane Reservoir, the Upper Belmont Reservoir, some of the heavier distribution pipe lines, one of them particularly running up North Broad street in Philadelphia, and a number of other miscellaneous water works designs, and in 1902 to 1903, I was division engineer on the design and construction of the new water supply works for Jersey City. I had charge of the construction of the water works conduit from Boonton to Jersey City of over twenty miles in length, heavy steel pipe work, two rock tunnels, one of them nearly a mile and a half in length and eight and a half feet in diameter; I also had charge of the working drawings for the Boonton dam, which was built at Boonton, a large masonry dam and reservoir there.

Then for about a year, in 1903, I was principal assistant engineer with the Commission for an additional water supply for New York City, which was engaged in making investigations for the new water supply for the City of New York. That was the Commission which recommended [fol. 196] the Catskill water works, which were later built and cost something like $160,000,000.

To go back a minute on the Philadelphia work, on the preparation for the improvement and installation and filtration of the water supply, that cost was about $12,000,000. The Jersey City water supply works cost about seven million.

Then for five years, from 1904 to 1909, I was in Columbus, Ohio, as engineer in charge of the design and construction of what was entitled The Improved Water and Sewage Works, leaving aside the question of sewage work

and the sewage disposal works, which was the first large one built in this country. The water supply work consisted of a large water filtration and water softening plant; of the Julian Griggs Dam, which is a masonry structure, thirty-three feet in height, something like 1,000 to 1,200 feet in length and a reservoir which backs the water up about five or six miles, and a pipe line in order to connect up the new works with the existing works.

Then in 1909 and 1910 I was resident engineer on the Passaic Valley Sewage project in New Jersey, which is a project involving the collection and disposal of the sewage from twenty pounds in the Passaic Valley, beginning at Paterson, New Jersey, coming down through Passaic, picking up all the towns on east side of the river, and winding up at Newark. I had charge of the surveys and the preparation of the plans of the trunk line sewer from Paterson down to Newark. At Newark the sewer is something like 13 feet in diameter, and this work was subsequently built at a cost of about $19,000,000.

Then for about a year, 1909 to 1910, I was engineer with the Metropolitan Sewage Commission of New York City, which was engaged in studies for collection and disposal of the sewage of the City of New York, and some of the work which was recommended then is now being designed, particularly at Ward's Island up in the East River.

In 1911, to the present time, I have been in private prac- [fol. 197] tice. From 1911 to 1917 I was associated with Mr. Rudolph Herring under the firm name of Herring & Gregory, with offices in New York, and we served a large number of cities in an advisory capacity, mainly with reference to water supply and sewage works.

In 1917, Mr. Herring practically retired from active work and I continued myself in New York until 1919. In 1919 I came to Baltimore and I have been here ever since, and in addition to my connection with the university I have been in private practice.

Some of the more important works that I have been connected with: Design of the sewage work of the City of Albany New York, of Trenton, New Jersey, Fort Worth, Texas, Austin, Texas, and other cities. I was also one of a commission of advisory engineers appointed by the Board of Estimates and Apportionment of New York City to report to them on the advisability of filtering the water

supply of New York, before the time of the Catskill Works water supply.

I made the valuation of the Charleston Light and Water Company for the City of Charleston, South Carolina, which works the city subsequently purchased.

A few years ago I was retained by the Public Improvement Commission of Maryland to serve with the City Solicitor, the late Mr. Marchant, made the valuations of the water companies which the city subsequently bought; the Baltimore County Water and Electric Company, the Roland Park Water Company, the Brooklyn and Curtis Bay Water Company, the Artesian Water Company, the Suburban Water Company, the Evergreen Lawn Water Company, the Denmore Hotel Park and Water Company.

These properties have all been since purchased by the city and incorporated in the distribution works of the City of Baltimore.

I also made the valuation of the Salisbury Water Company, Salisbury, Maryland, for the Salisbury Water and Sewer Commission, which was later purchased.

[fol. 198] I was appointed the third arbitrator at Havre de Grace to make a valuation of the Havre de Grace Water Company. That property was later purchased by the City of Havre de Grace.

I made the valuation for the City of Baltimore of the Mount Washington Sewerage Company a few years ago. That property was purchased and incorporated with the sewer system of Baltimore.

I served the Public Service Commission of Maryland twice, once in connection with the rate case at Westminster, Maryland, and also in connection with the rate case of the Baltimore County Water and Electric Company before that property was purchased by the city. I served the Public Improvement Commission of Baltimore twice in connection with the work at the Montebello Filtration Plant. I was one of an engineering board of review of the Sanitary District of Chicago some four years ago in connection with the controversy over the lowering of the lake levels and the diversion by Chicago of water from Lake Michigan through the Mississippi River. At the present time I am serving the Sanitary District of Chicago in connection with the hearing before Mr. Charles E. Hughes,

Special Master appointed by the United States Supreme Court, to determine how long it will take the City of Chicago to build complete sewerage treatment works, estimated to cost something like $150,000,000, and also the question as to how much water is needed to be taken from Lake Michigan for navigation of the Chicago River.

I was one of a board of three engineers to made investigation and report to the city of Detroit on the collection and disposal of sewerage. The work recommended cost about $40,000,000. The upper part of the intercepting sewer has already been built.

I served the city of Columbus, Ohio, some years ago for a period of about five years in connection with the enlargement of their water supply works. There was built a second reservoir known as the O'Shaunessy reservoir, and the O'Shaunessy dam. That dam is, perhaps, 1,500 or 1,400 feet, masonry section a little under 1,000 feet, raises [fol. 199] the water level about 63 feet and carries a masonry bridge across the spillway.

I am now serving the city of Columbus as consulting engineer in connection with the design and construction of additions to the sewer system and sewerage works, estimated to cost, perhaps, eight or nine million dollars. That work is now under construction.

For the last eight years, or six years, I have been consulting engineer to the Sewer Department for the city of Baltimore in connection with the enlargement of the sewage works at Back River, and of the main large sewers, not the small sewers.

Last summer I made a report to the Public Improvement Commission in connection with pumping water from the Mount Royal Pumping Station here in Baltimore and also recommendations as to the next source of water supply for the city of Baltimore, and I am now serving the Public Improvement Commission as consulting engineer in what is known as the new ten-million-dollar water loan for additions to the water works.

Q. Were you employed by the County Commissioners of Harford County in connection with the assessment of this real estate of The Susquehanna Power Company, located in Harford County?

A. I was.

Q. When were you employed?

A. Last year. I think it was in September.

Q. And who was employed in that work in connection with you?

A. Mr. Weston E. Fuller, Swarthmore, Pennsylvania.

Q. Will you tell the Commission what you did in connection with that work?

A. We were furnished with a copy of the statement which the company had filed with the State Tax Commission.

Q. That is, with the Public Service Commission?

A. No. State Tax Commission.

Q. That is right?

A. And also we were furnished with two statements [fol. 200] which gave certain figures with reference to the cost of the dam and certain other work in Harford County and Cecil County.

Q. Those were the statements that were referred to here yesterday, were they not?

A. They were.

Q. Go ahead.

A. We took these figures as a basis and made a distribution or an allotment of the real estate and personal property in the two counties.

Q. Are these the sheets you prepared in connection with that work?

A. They are, with a few slight changes.

Q. We would like to give one copy of this to counsel and one to the Commission?

A. To answer your question a little further, this blueprint which I have here, and of which photostatic copies have been furnished to the Commission and the company, is the same as the blueprints which we had last fall, except that the blue prints have been cut apart and rearranged and pasted together so as to avoid handling two blueprints, and make the exhibit somewhat simpler.

(Mr. Howard:) Is that the only change?

A. Yes.

Q. The figures are the same?

A. There are one or two slight changes, which I will explain.

By Mr. Archer:

Q. Mr. Howard asked you if there was any change in this set-up from the one that was before the County Commissioners last fall at the time a copy was given to the power company. If there are any changes, will you indicate them so that Mr. Howard can note them?

A. There is one change in connection with the railroad, an abatement was made and that shows in the figures.

Q. What was the change?

A. The railroad, as estimated, or as assessed, was $78,950. There was an abatement of $39,100, leaving a net of $39,850.

Q. It was cut in half, then, practically?

A. Approximately. And then under the land and water rights there was an electrical warehouse which was in at [fol. 201] $2,250, and this was not included in the assessment, and there is a deduction made in the last column corresponding. Then there is one other distribution under land and water rights, which is indicated with a circle, showing a distribution of the total.

Q. Where is that?

A. It is under land and water rights.

Mr. Howard:

Q. What is the change?

A. Well, the total is given here at $6,622,816, and that is divided into 203 acres of river bottom at $10, making $2,030, and a balance of $6,620,786, giving the same total, however, as $6,622,816.

Q. Just what is the change?

A. That is not a change. That is only a distribution of the two figures.

(Mr. Robinson:) The total is the same?

A. The total is the same.

By Mr. Archer:

Q. Right at this point, Mr. Gregory, did you assess the bridge on the top of the present dam—I mean, did you include that in your figures?

A. We did, and I should have added that that is shown on the prints here as $231,217 in the right-hand column.

Q. About half way up?

A. Yes.

Q. Now, where did you get the figures of the cost of that bridge?

A. From the figures furnished by the Power Company to Harford and Cecil Counties.

Q. And you allocated it according to the proportionate length of it in Harford County?

A. We did.

Q. Now, in that set-up that you have here, did you include the land that is in the roadbed on which State roads have been constructed?

A. It is included.

Q. Now, since then, have you made a statement showing what that was?

(Mr. Robinson:) The acreage.

[fol. 202] (Mr. Archer:) The acreage?

A. I have.

Q. How much acreage was there in the State highway?

A. 10.74 acres.

Q. And how much was in what was known as the parking ground, which has been turned over to the State?

A. 7.508 acres.

Q. And at $50 an acre——

(Mr. Robinson:) How about the Cemetery Road?

(Mr. Archer:) The two roads, then, together, are what?

A. The Cemetery Road is 4.42 acres and the total——

Q. The total acreage is what?

A. The total acreage is 22.668 acres.

Q. And at $50 an acre, how much is that?

A. $1,133.

Q. And add that to the bridge, what would that total be?

A. $232,350.

Q. And deducting that from the total assessment, what would remain?

A. $18,680,503.

Q. Now, Mr. Gregory, how did you get up this set of figures that you have shown the Commission and from which you fixed the assessment on the real estate of the Susquehanna Power Company located in Harford County?

A. We first took the statement made to the Tax Commission and tabulated it,

Q. What was that amount, what was the basis that you had to go on, what amount?

A. The statement gave certain titles and gave certain figures corresponding to the titles, and the total is $36,466,583.08. That is shown in the first column which is headed, "As given by the Power Company," with the sub-heading "Actual," and in the next column are the same figures rounded out and dropping the cents, taking them to the nearest dollar.

[fol. 203] Q. Go ahead, using that as a basis, how did you arrive at the figure for the assessment?

A. We next made another column entitled "First Adjustment," and in that column we summed up certain figures—that is, under the heading of "Expenditures not Allocated"—$8,058,590. Shall I read all these totals, or shall I just let the print explain itself in that column?

Q. Those totals are carried in that column

A. They are.

Q. Now, after you got those totals, what did you do?

A. In that column we made certain allocations. Under the dam and power house, there is a sub-division of costs between Harford County and Cecil County. The arrows, which are on the exhibit, show the method that was used in allocating the cost to the two counties. That is, we took the amount that was allocated to the power house and the dam for the two counties, we found a total for those two items, and then there was a balance to account for, which was distributed in accordance with percentages which are worked out and shown in the figures in the first column.

Q. The power house was all in Harford County, was it not?

A. Yes.

Q. And what percentage of the dam?

A. We did not work out the percentage of the dam. We took the dam and power house together to distribute the balance to account for. The percentages which we worked out were 62.8 approximately in Harford County and 37.2 in Cecil County.

Q. While all of the power house is in Harford County, there is more of the dam proper in Cecil County than there is in Harford—that is correct, isn't it?

A. Yes.

Q. Go ahead with your explanation?

(The Chairman:) Is there anything here to show just what proportion of the dam is in each county? I do not mean the cost, but the feet.

[fol. 204] (Mr. Archer:) Yes, I think that is in the statement.

(The Chairman:) All of the power house is in Harford County. Are there any figures here to show the Commission the cost of the dam, the cost of the part of the dam which is in Cecil County, and the cost of the part of the dam which is in Harford County?

(Mr. Archer:) I think so.

(Mr. Robinson:) You will find them right here, Mr. Chairman.

(The Witness:) The costs are given on this sheet, but the lengths are not given.

(Mr. Robinson:) That is in this item here (indicating)?

A. Yes.

(Mr. Archer:) That is the one you are referring to.

Q. As I understand it, the figure given you, coming from the power company, showed the dam and the power house together, with the proportion in each county?

A. Well, they gave us figures for the power house separate from the dam and by county.

(Mr. Howard:) May I ask Professor Gregory a question?

(The Chairman:) Certainly.

(Mr. Howard:) What is your basis of apportionment, length, cubic contents or what, of the dam, between the two counties?

(Mr. Robinson:) Here is the matter with reference to the dam.

(Mr. Howard:) On what basis has he done it?

(Mr. Archer:) Here are the distances.

[fol. 205] (Mr. Robinson:) No, that is the proportion.

(Mr. Archer:) Of money?

(Mr. MacNabb:) Here is the Cecil County statement, and here is the Harford County. That shows how many feet is in Cecil County.

(The Witness:) The statement which we had gave the dollars and cents.

(Mr. MacNabb:) It shows down here how many feet are in Cecil County.

(Mr. Archer:) This statement, in reply to the question of the Chairman, the statement furnished by The Susquehanna Power Company to Cecil County shows 3,100 feet of dam and spillway in Cecil County. Now, what is it for Harford County?

(Mr. MacNabb:) It would be the difference. I do not think we have any direct statement in those papers.

(Mr. Williams:) Is not the length given there?

(Mr. Robinson:) The length we estimated yesterday at about six miles.

(Mr. Archer:) Oh, no; not the length of the dam.

(Mr. Williams:) Just a little short of a mile.

(Mr. Archer:) I can say from personal knowledge that the dam is a little short of a mile.

(The Chairman:) Suppose we go on with the witness, gentlemen.

By Mr. Archer:

Q. What was the total length of the dam, Mr. Roux?

(Mr. Roux:) I could not tell you from memory.

(Mr. MacNabb:) Around 4,600 feet.

[fol. 206] (Mr. Roux:) Oh, no.

(Mr. MacNabb:) I thought you did not remember.

(Mr. Roux:) You have it somewhere there.

(The Witness:) At the bottom of the column entitled "Second Adjustment"——

(Mr. MacNabb:) 4,526 feet.

(The Witness:) At the bottom of the column entitled "Second Adjustment," just above the bottom, there has been added an item entitled "Interest during construction, not allocated." This was estimated on the basis of 6 per cent on the total cost for one-half of the two-year period, less interest earned, giving a net of 2,181,619, and that, added to the figure above, gives a total, including interest during construction, of $38,654,985.

By Mr. Archer:

Q. You heard Mr. Roux's testimony yesterday that at the time the assessment was made the investment was $45,511,000, did you not?

A. I did.

Q. If you had had that figure instead of this figure to work on, would the assessment have been larger for Harford County or smaller?

A. I think it would have been larger.

Q. In other words, the basis that you worked on, your total basis, including your interest during construction, was something over $38,000,000?

A. That is right.

Q. Now, what percentage was allocated to Harford and what percentage to Cecil County, if you remember, of the whole?

A. Well, we did not work out any percentage.

Q. You did not?

A. No, sir.

Q. Now, how did you classify the items for the purposes of assessment?

A. We then made another column entitled "Third Adjustment," and in that column we transferred the first item marked "Expenditures not allocated," of $8,058,590 to the bottom of the column labeled "Third Adjustment," and [fol. 207] included it with interest during construction, as previously estimated, giving two figures; one, total base cost, exclusive of expenditures not allocated, of $28,414,776, and expenditures and interest during construction not allocated, $10,240,209, making a total of $38,654,985, which is the sum total as given under the column marked "Second Adjustment."

In the next column which is marked "Distribution of Expenditures and Interest During Construction Not Allocated, $10,240,209," we have distributed that $10,240,209 to the amounts shown in column, Third Adjustment, in accordance with the ratio which the $10,240,209 bears to $28,414,776.

The next column is entitled, "Total Cost", and as shown is the sum of the two previous columns. In other words, the expenditures and interest during construction not allocated but distributed have been added to the figures in the third adjustment, and the total of that column is still $38,654,985.

In the next column, which is entitled, "Total Taxable Property"——

Q. By that, now, do you mean property that was taxable as real estate, or——

A. The real estate and structures and so forth.

Q. That did not include machinery, did it?

A. No, sir. The electrical generating equipment in the power house is dropped in that column.

Q. What is included in that column of "Total Assessable"—I do not mean in figures ,but what items?

A. The first item is electrical transmission system. Do you want the figures for that?

Q. Yes.

A. $463,125, transmission system buildings and structures, $38,504; telephone system, $769, dam and power house, $18,863,748; highway bridge on dam and power house, $529,311; land for electrical transmission system, $32,431; rights of way for electrical transmission system, $88,651; land and water rights, $13,436,874, giving a total of $33,453,413.

[fol. 208] Q. And of that, what is the proportion for Harford County in your last column, what proportion of that was allocated to Harford County?

A. $18,912,853.

Q. How do you make that allocation to Harford County—I mean on what basis did you arrive at the percentage that went to Harford County?

A. Well, in the electrical transmission system we distributed the costs between the counties as shown in the large column in the middle of the sheet.

Q. That was from information furnished by the company, was it, as to the cost?

A. As to the costs, and that gives for Harford County, for electrical transmission system, $109,293; transmission line, Delta-Conowingo dam, $1,409.

(Mr. Robinson:) That was entirely in Harford?

A. Yes. The dam and power house, $11,771,939. The railroad, $39,850.

(Mr. Archer:) That is the railroad leading from the dam to Havre de Grace?

A. Yes—no.

Q. Yes, it is.

A. Oh, yes, to Havre de Grace.

Q. Privately owned railroad?

A. Yes. I thought you meant the one on the other side.

Q. No.

A. In the highway bridge on dam and power house, $231,217; land and water rights, $6,759,145, making a total of $18,912,853.

Q. That was the taxable value in Harford County, including all the portion of the highway bridge and the land in the State roads, that you have since deducted, or you have in your testimony here deducted?

A. Yes, basing the figures as of the date when the figures were given to us.

Q. Now, this item, "Land and Water Rights", where did you get the phraseology for that, Land and Water [fol. 209] Rights? Was that not from the statement furnished, or was that or not from the statement furnished by the company?

(Mr. Robinson:) I think you will find that on this page (indicating).

(Mr. Archer:) This is a statement of the company.

Q. I mean the phraseology of that "Land and Water Rights?"

A. The main caption we used, "Land and Water Rights", and the sub-caption, "Land and Rights", are on the statement of the State Tax Commission, and also the sub-heading, "Land", is also on the statement furnished to the State Tax Commission.

Q. What I wanted to bring out was that the power company, in their own statement, used that phraseology, did they not?

A. They used the phraseology, "Land and Rights", and "Land".

Q. Now, what is included in that item, "Land and Water Rights", for which you have allocated $6,759,145 to Harford County?

A. Do you want these individual items here?

Q. These items—I won't read them all—they are the items which immediately follow it?

A. Yes.

Q. How many acres are there in Harford County in the pool? Is it shown on that sheet?

A. The designation is, "Land submerged above dam, 1,540."

Q. 1,540 what.

A. Acres.

Q. And how much land is submerged below the dam in connection with the tail-race?

A. The total land is given as, "Submerged below the dam, 773.85 acres."

Q. That was what was included in the tail-race, was it not?

A. Well, I do not know whether it is limited to the tail-race or not.

(The Chairman:) That is in Harford County, too?

[fol. 210] (Mr. Archer:) Yes.

Q. That would make a total of the land submerged by the tail-race below the dam and by the pool of the dam proper as what?

A. 2,313.85 acres.

Q. It is a fact, is it not, Mr. Gregory, that there are about three or four thousand feet below the dam that was dug out for the tail-race—wasn't that below the dam

(Mr. Robinson:) The breast of the dam.

A. I do not know the distance.

(Mr. Archer:) You took the company's figures for that?

A. I do not remember having seen any figures as to the length of the tail-race.

Q. I mean, you took their figures as to the acreage?

A. Yes.

Q. Mr. Gregory, you saw the report which was offered in evidence here yesterday, with the expenditure in Maryland in connection with this dam and power plant, which was about forty-five——

(Mr. Robinson:) Here it is, Mr. Archer.

(Mr. Archer:) Was forty-five million, five hundred and some odd dollars.

(Mr. Robinson:) $45,797,000.

(Mr. Archer:) $45,797,111.42?

A. I did.

Q. This was an estimate made as of December, 1928. You did not have this figure at the time you made your estimate, did you?

A. I did not.

[fol. 211] Q. How do you think that figure of expenditure compares with the present value of this power plant and the property of the Susquehanna Power Company in Maryland?

(Mr. Howard:) He is speaking of what figure?

(Mr. Archer:) $45,797,111.42.

(Mr. Howard:) We object to that, may it please the Commission.

(Mr. Robinson:) This is the amount, the amount they admitted as the expenditure at the date of this assessment, $45,511,000.

(Mr. Archer:) They admit that the expenditure at the time this assessment was made was $45,511,172.12.

Q. Now, how does that figure compare, that expenditure compare with the value of that property in Maryland?

(Mr. Howard:) One moment. The witness has made no examination of this plant. He has not gone into it sufficiently to furnish him with the basis to compare the cost with the value. He is now asked the question, Suppose the books show that the expenditures up to a date later than his examination amount to a certain figure, how, in his opinion, does that compare with the cost? The proper basis for any testimony by this witness of the value, as distinct from the cost of this plant, or this enterprise, has not in any way been shown. It could not be.

(Mr. Archer:) I will ask him some preliminary questions.

Q. Have you made a study of this project from the——

(Mr. Howard:) Have you made a study of the property?

By Mr. Archer:

Q. Have you made a study of this project and property [fol. 212] from the standpoint of your technical knowledge?

(Mr. Howard:) Sufficient to put a value on it.

(Mr. Robinson:) Let us put the question.

(Mr. Howard:) All right.

By Mr. Archer:

Q. Have you made a study of it?

A. I have.

Q. And in connection with that, have you seen the testimony and the reports and statemen-s furnished by The Susquehanna Power Company to the Federal Water Power Board, the Public Service Commission of Pennsylvania, and the Public Service Commission of Maryland?

A. I have.

Q. And in connection with Mr. Fuller, have you made a study of those reports and of the testimony?

A. I have read portions of the testimony—not all of it.

Q. You have read portions of the testimony pertaining to these values to which your attention was directed, have you not?

A. I cannot say that I have read them all, but I have read some of them.

Q. Have you made such a study of this, and such an examination of these properties, that you can answer the question that I previously asked you as to value?

A. I have. That is predicated on the statement of the power company that the cost, the investments are as given by the figures submitted by them in their reports which have been filed with public bodies.

Q. And in addition to that, did you make a study of the report which was offered in evidence here yesterday by Mr. Roux?

A. Well, within the time that it was available last evening.

Q. And this morning?

A. And this morning.

Q. Now, in connection with your work—I do not want to go all over your qualifications again—one of the important [fol. 213] parts of your business is valuation, isn't it, of these water plants?

A. It was part of my business, yes.

(Mr. Howard:) Are you through with your preliminary questions?

(Mr. Archer:) Yes.

(Mr. Howard:) I want to repeat my objection: We do not think, may it please the Commission, that whatever the qualifications of the witness may be, he has made any objec-

tive valuation of this plant at all. He is perfectly competent to come here and testify about his calculations based on the cost, but when you ask him to give his statement as to the value of property which he has not been over for that purpose, when he has not made any of the examinations an engineer would make before he would undertake to give the objective value of it, I think it is departing entirely from the basis laid down, and I do not think he has shown that he has made the examination necessary for that purpose.

(Mr. Robinson:) The very thing that he has done there, may it please your Honors, was to estimate the value of it, and he has estimated it in figures, as he has shown.

(Mr. Archer:) He has been working on it since last September.

(Mr. Howard:) He has been working on those figures, but he has not been making any examination of the plant and property for that purpose.

(Mr. Robinson:) I think he has.

By Mr. Archer:

Q. What, in your opinion, is the value of this property in Maryland of The Susquehanna Power Company?

(Mr. Howard:) The same objection.

A. As a——

(Mr. Archer:) One minute. There is objection.

[fol. 214] (The Witness:) Excuse me.

(The Chairman:) Just what are you trying to prove by this witness, Mr. Archer?

(Mr. Archer:) We are trying to prove the value of the property. I was simply asking him that question as to all of it, and then I was going to ask him as to Harford County. We are putting him on as an expert to show the value of the property.

(Commissioner Leser:) Aren't you showing the cost?

(Mr. Archer:) He has examined the property.

(Commissioner Leser:) He hasn't said that he considered himself competent to value it from an inspection.

(Mr. Robinson:) He hasn't said so?

(Commissioner Leser:) Has he?

(Mr. Howard:) He hasn't said that he has made any such examination that would enable him to do so.

(Mr. Robinson:) I think he has testified to his qualifications in that he has put values on nearly all of the properties in Maryland of that kind——

(Commissioner Leser:) Oh, he may be competent to do it, but has he done it?

(The Chairman:) Ask him if he has ever done it.

(Mr. Robinson:) Have you made such an examination of this property that you can say what, in your opinion, the property of The Susquehanna Power Company in Maryland is worth, Mr. Gregory?

A. I have, and I should have to answer that in this way: that I have seen the property at various times; that it is a magnificent piece of work, apparently exceedingly well built. I am familiar with the design and construction of dams. The figures, as submitted by the company as of September 30, 1928, are, in round figures, something over [fol. 215] $45,000,000, and in the case before the Public Service Commission of Maryland, they are guaranteed a 7 per cent return on the legitimate investment; that the investment as given by the company, therefore, would make me say that the property was worth the amount which they have set forth with that guarantee.

(Mr. Howard:) May I ask one question?

(Mr. Robinson:) Wait a minute. Let him answer the question.

Q. What, in your opinion, is the value of that property in Maryland?

A. In round figures, $45,000,000.

(Mr. Howard:) This is all under our objection, of course, may it please the Commission.

By Mr. Howard:

Q. You have made no detailed examination of the physical property, have you?

A. No.

Q. You are merely basing your opinion on cost figures which you say are derived from the accounts of the company?

A. That, together with the testimony before the Public Service Commissions of Maryland and Pennsylvania, and the guaranteed return on the investment.

(Mr. Robinson:) And your personal investigation of it, too? You yourself——

(Mr. Howard:) You yourself have made no personal investigation of the items that go to make up these properties?

A. None other than the items submitted to the State Tax Commission and the statement submitted yesterday amounting to, in round numbers, $45,000,000.

(Mr. Robinson:) You have been over the property and investigated it?

A. I have been to the property, yes, but I have made no detailed examination of it.

(Commissioner Leser:) What do you mean by guar-
[fol. 216] anteed return? Did the Public Service Commission guarantee the United Railways a profit?

(The Witness:) If I understand Case No. 2329, before the Public Service Commission, of The Susquehanna Power Company, there were certain changes of the proposed original set-up of the property, and that change is shown on page 7 of that case, which says: "Instead of the minimum payment to be made by the Philadelphia Electric Company above expenses of operation, maintenance and depreciation of $4,580,000 per annum, there is substituted a provision for the payment of a 7 per cent return on the actual, legitimate investment in the portion of the project covered by the list of Maryland properties and list of Pennsylvania transmission lines"——

(Mr. Howard:) What are you reading from?

A. This (indicating).

(Mr. Williams:) Put it in the record.

A. Public Service Commission of Maryland.

(Mr. Howard:) You are reading from what, a report, or petition, or opinion?

(Mr. Robinson:) What is the name of the book on the outside?

A. In the matter of The Susquehanna Power Company and the Susquehanna Electric Company. Application to permit the Susquehanna Electric Company to issue its

capital stock and to exercise its franchises to approve and plan an intercorporate arrangement of financing the project of The Susquehanna Power Company under its Charter. Case No. 2329, before the Public Service Commission of Maryland. Opinion and Order No. 9993, filed January 13, 1926.

(Mr. Howard:) We repeat our objection, may it please the Commission. The question is not one for the witness to express an opinion on for the purpose of this Commission. His information is derived merely from seeing the property generally, has made no examination of it, from these figures [fol. 217] as to cost and from statements made in applications to the Public Service Commission as to the financial arrangements.

(Mr. Archer:) I would like at that point to read into the record—this was from the Public Service Commission of the Commonwealth of Pennsylvania—"Applications of Susquehanna Water Power Company and Philadelphia Electric Company in the Matter of the Conowingo Project, January 12, 1926." Under the heading of the report of the Commission is the following: "The return has been changed from a basis of a minimum rental——

(Mr. Williams:) Will you file that?

(Mr. Archer:) Yes. I am going to read it into the record: "The return has been changed from a basis of a minimum rental and energy charge to one of 7 per cent on the actual investment in the project as defined in the Federal Water Power Act. The Applicant has also submitted certain additional changes in the contract, which have been considered by us, and which are determined to be compatible with the public interests. The net result of all the changes will be that the cost to the Philadelphia Electric Company of the hydro-electric current produced at Conowingo will be lower than as at first proposed by an amount of upwards of $900,000 per year for fifty years, thus producing savings which will accrue to that company and to its rate payers." I now file that as County Exhibit 1.

(Mr. Howard:) We repeat our objection to that. That is a petition, or whatever it is, or an order passed by the

Pennsylvania Public Service Commission which has no jurisdiction over this Maryland court. It has no bearing on the question before the Commission.

(Mr. Archer:) The Maryland Commission participated in that.

(Mr. Howard:) We object to it. I do not think that proves it has value.

(Commissioner Leser:) What is the tax rate in Harford County, Mr. Gregory?

[fol. 218] (The Witness:) I do not know.

(Commissioner Leser:) Do you mean to say that you have not figured what this tax would amount to?

A. I did know last fall.

Q. Wouldn't that be a very material item in your calculation?

(Mr. Archer:) No, your Honor, for this reason.

(Commissioner Leser:) In reference to the guarantee of a 7 per cent. net return?

(Mr. Robinson:) This is the situation, your Honor: it expressly provides that after the payment of all taxes and expenses and operating expenses they are to receive 7 per cent. net, after the payment of all of those charges.

(Commissioner Leser:) Isn't there a limit to which you can load rates?

(Mr. Robinson:) There is a limit of 7 per cent. on this. Do you mean the rate they charge in Philadelphia?

(Commissioner Leser:) No. Isn't there a limit? You may have all the privilege you want to make a certain net, but still it may bring the cost so high people won't buy it.

(Mr. Robinson:) But people have bought it.

(Commissioner Leser:) If you would allow the United Railways to charge one dollar as car fare, they wouldn't do it.

(Mr. Robinson:) I do not suppose so.

(The Chairman:) We feel that the guaranteed return of this company has very little bearing on the value of real estate in Harford County.

(Commissioner Leser:) Who guarantees it?

(Mr. Robinson:) The guarantee is made by the Phila-

[fol. 219] delphia Electric Company in a contract which we

will offer in evidence between the Susquehanna Power Company and the Philadelphia Electric Company They are paying four or five million dollars a year and they guarantee to pay an amount to the Susquehanna Power Company sufficient to yield 7 per cent after the payment of taxes and maintenance and operation expenses, and so on, as set forth in their contract.

(The Chairman:) After all, Mr. Robinson, that certainly does not reflect the value of the real estate in Harford County?

(Mr. Robinson:) Do you think, may it please your Honors, that a project that is as valuable as that, upon which, for example, which is a matter of record, they bonded it for $60,000,000——

(Mr. Mason:) Oh, no.

(Mr. Williams:) Thirty-six.

(Mr. Robinson:) Isn't there a $60,000,000 mortgage on it? If there isn't, there is something wrong with the records.

(Mr. Williams:) That is to cover all of that property.

(Mr. Mason:) I will state the facts to you: The mortgage authorized an issue of $60,000,000 on the entire Conowingo project, including Maryland and Pennsylvania and all of the transmission lines.

(Mr. Archer:) Eighty-eight per cent. of that is in Maryland.

(Mr. Mason:) Of that only $36,000,000 of bonds have been issued, and they are on all of the property in both States.

(Mr. Robinson:) You sold a great deal of preferred stock by which you raised considerable money.

(Mr. Mason:) I will give you the entire financial history, if you want it.

[fol. 220] (Mr. Robinson:) Eighty-eight per cent. of that property, you say, is in Maryland.

(Mr. Williams:) Eighty-eight per cent?

(Mr. Mason:) No.

(Mr. Howard:) May it please your Honors, all of this does not go to prove value of this tangible real estate in Harford County, we submit.

(The Chairman:) We do not think so.

(Mr. Robinson:) If you do not think so, your Honors, there is no use arguing it.

By Mr. Archer:

Q. When you say that you had looked over the project but had not made a detailed examination of the several items on the ground, you did make a detained examination of what they said was there from their report, did you not?

A. Well, as I say, I have taken their figures and have used those as a basis; we have used those as a basis to allocate and distribute the amounts given in the State Tax Commission report, or a statement to the State Tax Commission.

Q. In other words, you assumed that the statements they have made to the Public Service Commission of Maryland for the purpose of rate-fixing, were true?

A. Right.

Q. Yes. You would have to. Now, Mr. Gregory, did you hear Mr. Roux testify yesterday?

A. Yes.

Q. Have you got a copy of the report that Mr. Roux filed with the Commission yesterday?

A. I have.

Q. Showing the allocation of the $45,511,000?

A. I have.

Q. In that report Mr. Roux only allocated to Harford County, for the purposes of real estate assessment, something between eight and nine million dollars. How do you reconcile that figure with the figure that you have arrived [fol. 221] at?

A. Well, he has distributed his costs in a different method from what we have, and then there are certain items labeled "intangibles."

Q. That he has labeled "intangibles"?

A. Yes.

Q. Well, what about them?

A. Well, I do not think they are intangibles.

(Mr. Robinson:) $16,000,000, wasn't it?

(Mr. Archer:) In other words, then, these items labeled, "intangibles," a part of them, you think, are not intangible?

A. Correct.

Q. Was it possible for you to go through and pick those items out?

A. I think I could pick out most of them. There is a column entitled, "Intangible Fixed Capital." It might be better if that were entitled, "Not Allocated." The first investment is given as pre-license of $5,800,834 and some odd cents. We will drop the cents. It seems to me that could be allocated.

Q. In looking at the testimony before the Public Service Commission, given by the Susquehanna Power Company, did you find any evidence showing what constituted that?

A. I do not remember in detail now.

Q. In connection with that item I would like to read into the record from page 602 of the testimony given before the Public Service Commission by Mr. Kellogg.

(Mr. Howard:) Mr. Who?

(Mr. Archer:) Mr. Kellogg of The Susquehanna Power Company.

(Mr. Robinson:) That was a witness for The Susquehanna Power Company?

(The Witness:) Yes.

(Mr. Howard:) It seems to me—I do not want to lengthen [fol. 222] the proceedings—but if they want to put a witness on, they ought to have him.

(Mr. Archer:) No, that is not true.

(Mr. Robinson:) We have an agreement that we could use any of the records that had been used and any of the testimony.

(Mr. Howard:) Yes.

(Mr. Archer:) We are not asking for an agreement. The Court of Appeals of Maryland has decided that records before the Public Service Commission are evidence.

(Mr. Howard:) Of what?

(Mr. Archer:) Before the State Tax Commission.

(Mr. Howard:) For what purpose?

(Mr. Archer:) For any purpose.

(Mr. Howard:) Do you mean to say that you can read the testimony of anybody who testified before the Public Service Commission of the State Tax Commission?

(Mr. Archer:) This is one of the officials of your company.

(Mr. Howard: Of Stone & Webster.

(Mr. Archer:) He certainly was employed by you.

(Mr. Howard:) Yes, but he was not testifying for this purpose.

(Mr. Robinson:) No, he was testifying for the purpose of fixing rates. I will admit he wasn't testifying for this purpose.

(Mr. Archer:) I have the record here. May I read from the record?

(Mr. Robinson:) Read from the record.

[fol. 223] (The Chairman:) I think that that can come in.

(Mr. Robinson:) Why, yes.

(Mr. Archer:) I am reading from page 602.

(Mr. Williams:) Of what?

(Mr. Archer:) Of the testimony given before the Public Service Commission of Pennsylvania, the Public Service Commission of Maryland, and the Federal Water Board in joint session.

(Mr. Williams:) In Philadelphia.

(Mr. Archer:) Some of it was taken here and some in Washington and some in Philadelphia.

(Mr. MacNabb:) It was in Philadelphia.

(Mr. Williams:) What is the date of it?

(Mr. Archer:) June 26, 1925.

(Mr. Williams:) That was at the session in Philadelphia, wasn't it?

(Mr. Archer:) Sir?

(Mr. Williams:) Yes.

(Mr. Archer:) I do not know.

(Mr. Williams:) The front page will show you.

(Mr. Archer: It is at the hearing on June, 26, 1925.

(Mr. Williams:) Where?

(Mr. Archer:) Philadelphia. This is a question asked Mr. Kellogg:

"Q. Then, may I ask you whether or not in engineering experience and in estimating values there is a method by which from the aggregate figure of $52,250,000 you can [fol. 224] give an opinion concerning the value of the lands and rights.

A. There is a very common, I might say, usual, method of ascertaining the value of water power rights, and that is to compare the cost of production of power from this water

power plant, whatever it is, and where it is, compared with the known cheapest available source of power supply. In other words, the amount which can be saved compared to the next cheapest available power supply by using the proposed hydro is the measure of its value, and the amount by which that would capitalize at a reasonable rate of return, whatever is considered reasonable by the buyer, would be the measure of what he could afford to pay in money to get it by going ahead and developing the water power, as compared to continuing with the use of this next cheapest available power supply.

"Q. Have you applied that method to the Conowingo project to endeavor to determine the value to the Philadelphia Electric Company of the lands and rights being acquired under the option, and if so, have you got those figures there?

A. I have a sheet I have prepared showing that.

"Q. Will you tell us what that value is, and then explain how you arrived at it?

A. The value computed in the manner I have suggested is $21,900,000.

"Q. How did you arrive at that value?

A. It is arrived at as follows: We have shown in our Exhibit Supplemental No. 9 that there is a gross saving to the Philadelphia Electric Company from the use of hydro as compared to steam of $8,760,350 a year. That is the difference between the cost which the Philadelphia Electric Company would have to incur if it manufactured all of its power by steam and the estimated cost which would be left after the hydro was taken into the system. This figure has got to be reduced in order to show a net saving by the amount which the Philadelphia Electric Company would have to expend in order to utilize this hydro power, which consists of the item of operating expenses, taxes, maintenance, and depreciation on the hydro property and transmission lines, amounting to $1,430,000, and the cost of operation, maintenance, depreciation, and taxes, as well as annual charges on the investment required by the Philadelphia Electric to take this hydro power into its own system, and that amounts to $1,260,000 a year. The sum of those [fol. 225] two deductions, $2,690,000, subtracted from the

gross saving of $8,760,350, leaves a total annual savings to Philadelphia Electric Company on the basis of present steam cost of $6,210,350.

"In my computation I have capitalized the net saving arising from hydro at 9 per cent, giving it a total worth of $69,000,000, approximately. This $69,000,000 must represent the value not only of the water rights but also of constructing the plant itself, which we have estimated at $52,220,000. From that $52,220,000 I have deducted the amount allowed in that figure for cost of land and rights—that is, the $5,120,000—leaving $47,100,000 as the cost of the hydro project, exclusive of the estimated cost of lands and rights, and it is the difference between this net cost, exclusive of rights, and the capitalized value of the net saving, which amounts to $21,900,000."

(Mr. Howard:) The testimony of a witness who testified in another case, may it please the Commission, read here to show what he then estimated as an expert, the net saving to the Philadelphia Electric Company to be, has no possible bearing on the valuation of this specific real estate in Harford County, and this specific dam and other structures there.

(Mr. Robinson:) It was before the Public Service Commission of Maryland.

(Mr. Howard:) No, it was not.

(Mr. Robinson:) They were sitting jointly, with Pennsylvania. You will find that in the record.

(Mr. Archer:) I am coming to that very item. They say that that land, those pre-costs, pre——

(Mr. Robinson:) Pre-war costs.

(Mr. Archer:) Pre-permit costs.

(Mr. Robinson:) That was before the war.

(Mr. Archer:) I can read more testimony and bring it out more clearly.

[fol. 226] (Mr. Howard:) Has the Commission acted on what you have read?

(Mr. Archer:) Before they have acted I wanted to say a word; the purpose of reading that was this: The pre-costs of this land, which they took over, which had been bought up for the last twenty-five years or longer, had been bought at a very low price. Now, they had bought that land at a figure something less than this five million and some odd

thousand dollars they show there. Now, they put their expert witnesses on the stand before the Public Service Commission. Mr. Kellogg was an expert from Stone & Webster, employed by the Susquehanna Power Company and the Philadelphia Electric Company and testified before this joint public service commission hearing, and he testified that the real value of this land and rights, which they had paid five million dollars for, was twenty-one million dollars. Now, they not only did not allocate the $21,000,000, but they did not allocate the $5,000,000. They throw it out in the basis of assessment. I am asking Mr. Gregory if he had that information—he read it in the record—as a matter of fact, he is the one that found it—if he had that information when he was showing that Mr. Roux made his mistake in the allocation of the five million——

(Mr. Howard:) I do not see yet the relevancy of any or all of that testimony.

(Mr. Robinson:) The very thing we are here, may it please your Honors, for, is to try to get values, and you are dealing with an unusual value. I do not suppose that this Commission has ever had before it, or probably ever will have again, or ever could have before it, a question that is just similar to this. There was a small proposition up in Garrett County, but here is a great project, which Mr. Roux says will be the greatest in the world—they have got 350,000 horse power——

(Mr. Archer:) 385,000.

(Mr. Robinson:) Three hundred and eighty some thousand horse power there at a cost of about $125,000 a horse power, 385,000 times that, and it is possible by reason of the [fol. 227] location of this property, by reason of the particular adaptability of this river, and of these river banks, and of the power in that river, to generate and make an immense earning. Now, how are you going to compare that with any other land? How are you going to compare the land value there with farm land? It is the utility for which it is possible to use it that fixes its value. That value is fixed by the return they get from it. Why, that is the ordinary way of fixing value on real estate in this city. If you wanted to buy a house for somebody you would find out what it rented for—you would find out what it rented for. It is the return you get from the house that fixes the value of that property. If it is worth $50 a month or $200

a month, assuming that the condition of it is in fair shape, you base your estimate of its value on the return, and so, with all due respect, when my brothers argue that the amount of return that you get from this property has nothing to do with the value of the property, I respectfully differ with them. I think it is a vital thing that has much to do with it. I do not see how else you could estimate it. We have got thousands of acres of land here that is being occupied for a purpose that is as valuable as this. Why, the return you are getting from the use of that property is one of the vital reasons for aiding you as the State Tax Commission of Maryland in arriving at a proper assessment of it.

(Mr. Archer:) I want to say that the point raised by Mr. Howard as to the admissibility of that evidence was squarely before the Court of Appeals in a case where Baltimore City appealed, where the record of the Public Service Commission was offered in evidence here, and there was objection to it, and the Tax Commission used the record of the Public Service Commission for the purpose of reducing an assessment, and Baltimore City appealed because they said it was not proper evidence before this Commission, and the Court of Appeals decided it was proper to be used by this Commission. I can get the case. Now, what I was reading from is a record of the Public Service Commission and I have the Secretary of the Public Service Commission here to prove it.

[fol. 228] (Mr. Howard:) Because the Court of Appeals may have held that a valuation arrived at by the Public Service Commission might, in certain circumstances, be admissible, it does not follow that the testimony of anybody who testified before that Commission, because it constitutes, as my brother says, a record there, is admissible for the purpose of this hearing. This is the testimony of a man who testified four years ago, giving some estimates as to what the future result of this project would be.

(Mr. MacNabb:) This is a case, may it please the Commission, that Major Archer was calling for, the case of Baltimore City against the C. & P. Telephone Co. in 131 Md.—we do not have the book here—but this is the particular thing that the major had in mind: "The Reports made of the Proceedings of the Public Service Commission and the Finding of such Commission upon the same, made

when the Public Service Commission was determining the proper rates to be charged, may be considered by the State Tax Commission."

(Mr. Howard:) That means relevant proceedings.

(Mr. Archer:) Isn't this relevant?

(Mr. Howard:) No.

(Mr. Archer:) The man was under oath.

(Mr. Robinson:) Fixing value for the purpose of rate-making.

(Mr. Howard:) He was not even fixing value because no value has been fixed. He was applying for a license.

(Mr. MacNabb:) Mr. Kellogg was presented as the expert for the Susquehanna Power Company before the joint Commissions of the two States when they were trying to fix their rate, and he was produced there, to show the value of this property so that they might get a proper return on it. He was foretelling the value of this property—I do not know that he ever saw it—but here is Mr. Gregory, who has seen it and who has been over it, while Mr. Kellogg, the expert of Stone & Webster Company, the people who built [fol. 229] the Conowingo dam and power house, was telling these people for the Susquehanna Power Company what they had and what they would have.

(The Chairman:) I understand you make a motion to strike out, Mr. Howard?

(Mr. Howard:) All that was read from the testimony of the witness.

(The Chairman:) The Commission will take that under advisement.

By Mr. Archer:

Q. Mr. Gregory, take that first item, now, and, you say in that connection you have seen this testimony pertaining to it—is that correct?

A. Yes.

Q. Go ahead with what you have to say about that?

A. I said that it seemed to me that could be allocated.

(Mr. Robinson:) Allocated as what?

A. As tangible property.

(The Chairman:) What was the amount of that?

A. $5,800,834.

By Mr. Archer:

Q. What is the next account?

A. The next account is Organization, given as intangible, $154,240. I think that might be allocated as between the two counties also.

(Mr. Robinson:) As real estate—as tangible or intangible?

A. As tangible, but not necessarily just limited to real estate.

(Commissioner Weant:) Did you allocate it in your calculations—did you allocate all of these figures?

A. None of Mr. Roux's figures. We allocated the figures submitted by the company.

(Commissioner Weant:) That five million dollars?

[fol. 230] (Mr. Archer:) It was not put in separately.

(The Witness): Yes, that is allocated.

(Mr. Howard:) They are all included in the total, aren't they?

(Mr. Archer:) It was an entirely different set-up in this report of Mr. Roux's from the report that had been furnished on which Mr. Gregory did his work.

(Mr. Howard:) Because it has reference to September 30th, 1928.

(Mr. Archer:) No; I mean the whole set-up of Mr. Roux's is different, I think.

(The Witness:) The next item is "Purchase Price of Land, C. & P. D. Railway Relocation, $92,430."

Q. What is your reason for making that part of the tangible assessment?

A. Why, that was necessary, if I understand the situation correctly, in order to be able to relocate the Columbia & Port Deposit Railroad.

Q. Why did the Columbia & Port Deposit Railroad have to be relocated?

A. Because it would be flooded by the pool.

Q. In other words, in order to create the pool you had to buy this land to move the railroad, is that what you mean?

A. That is my understanding.

(The Chairman:) How about the two items preceding that?

A. Those are not under "Intangibles." They are under "Tangibles." We are discussing "Intangibles."

(Mr. Archer:) We are taking the column Mr. Roux put in "Intangibles."

A. I was discussing only those in the column entitled "Intangible Fixed Capital."

[fol. 231] (Mr. Robinson:) Entitled by Mr. Roux yesterday in his testimony?

A. Yes.

(Mr. Robinson:) You are criticising those items?

A. Yes.

(The Chairman:) What we are trying to get at is, what items he classifies differently from what Mr. Roux classified them?

(Mr. Archer:) He has classified them all down to that point?

A. Yes.

Q. The pre-license cost Mr. Roux could not classify at all?

A. The next item was one of miscellaneous expenses of land agent, surveying, searching and examination of titles at the county seat and Annapolis to meet the requirements of the trustee under the mortgage, recording fees, revenue stamps, copies of deeds, securing brief of title, et cetera, subsequent to February 20, 1926, $22,679. I do not see why that could not be directly allocated to tangible property.

(Mr. Robinson:) That was necessary, wasn't it?

A. Yes. It should be charged to land. It is under the heading of Account 216—Land. The next item——

(Commissioner Leser:) Have you made any distinction between the real and personal property?

A. In this set-up, of which you have a copy——

(Commissioner Leser:) Are you clear in your mind as to what is real and what is personal?

A. Only as I have been told by the attorneys.

(Commissioner Leser:) What were you told? Give me what you consider to be the personal property.

[fol. 232] A. As I understand it, the electrical generating equipment in the power house was personal property and could not be taxed as real estate.

(Commissioner Leser:) Machinery?

A. Yes.

Q. You also understand the County Commissioners have no power to assess that?

(Mr. MacNabb:) That was cut out of this.

(The Witness:) Yes. The next item is "Part of salaries and expenses of the P. E. Company, real estate department, copying deeds, et cetera, $1,573.43." I think that should be allocated.

By Mr. Archer:

Q. To what?

A. To tangible property. It is under the head of "Land." The next item is "Damages paid to land owners on account of construction of railroad to Havre de Grace, $7,996."

(Mr. Robinson:) That was necessary for the railroad, wasn't it, to have the land to build on?

A. Yes. I do not know the details of those damages, so I cannot say just where they should be allocated, but it may be that they should be charged to the construction of the railroad, although here they are allocated under the intangibles and under the main heading of "Land."

The next item is, Cost and Expenses for Right of Way for State Road Relocation, $3,816. I do not see why that could not be allocated to land.

(Mr. Robinson:) As tangible?

A. As tangible.

Q. You think it should be, don't you?

A. I think it should be; yes, sir. The next item is Miscellaneous and Transportation Expenses in connection with Negotiations for County Road Changes and Vacation of [fol. 233] same, $1,684. I think that should be allocated to tangible property, land.

The next item is Paid State Roads Commission in lieu of constructing county roads, $150,512. I assume that that was for the reconstruction of roads.

Q. That were flooded?

A. I do not see why that is not directly tangible and chargeable to the construction of roads.

The next item is "Cost of County Bridge and Road Approaches, $178,085." I think that is directly chargeable to tangible property.

Q. What is tangible?

A. Cost of bridge and road approaches needed in order that the reservoir could be built, and to maintain bridges and roads.

The next item is, "Cost of State Road Approach on each side of dam, $310,680." I should say that was tangible and chargeable to construction of roads needed in order to construct the reservoir.

Q. To take the place of the roads that had been flooded for the dam?

A. Yes.

Q. And under a contract with the State, a written contract?

A. Yes, and to provide approaches to new roads needed.

The next item is, "Clearing bed of river of obstructions, cutting trees as per directions of the Forestry Department, demolishing Conowingo bridge, et cetera, $96,052." I should say that was directly chargeable to the construction of the reservoir, as tangible property.

Q. As tangible property?

A. Yes.

The next item is, "Cost of relocating telephone poles and lines, $26,031.70." Well, that would be tangible. It might be classified under an expenditure needed to construct the reservoir, or merely to relocate the telephone poles and lines, something that occurs very frequently in reservoir construction.

[fol. 234] The next item is, "Services of engineering department of Pennsylvania Railroad in connection with relocation of railroad, $77,014." I should think that would be directly chargeable as tangible to the cost of relocating the railroad, or possibly it might be charged under engineering.

The next item is, "Services of watchman, track inspectors et cetera, in connection with relocation of railroad, $8,523," which is also tangible and directly chargeable, I should say, to the cost of relocating the railroad.

The next item is, "Damages to operation of P. R. R. due to interruption of service during relocation, $1,646." I should say that was directly chargeable to the cost of relocating the railroad.

The next item is, "Damages paid to land owners during railroad relocation work, $50,000." I should say that should be tangible and chargeable to the cost of relocating the railroad.

The next item is, "Cost of relocation of tracks, bridges, trestles stations, et cetera, of Columbia & Port Deposit Railroad, $3,554,730." I should say that was tangible and chargeable directly to the cost of relocating the railroad, and it will be reflected in the cost of construction of the reservoir.

The next item is, "Cost of relocation of Conowingo Post Office, $1,929." That is tangible and should be charged to the cost of constructing the reservoir.

The next item is, "Expenses and awards in condemnation cases for acquisition of land for Columbia & Port Deposit Railroad, $11,756." That is tangible and should be chargeable to the land.

The next item is, "Expenses and options allowed to lots on railroad relocation cases, $1,495." I would say that is tangible and should be charged to land.

The next item is, "Expenses before P. S. C. of Maryland on hearing application to raise tracks through Port Deposit, $920." Well, that may be charged to the cost [fol. 235] of relocating the railroad, or it may be charged to some of the general expense. Now, in that column, I have included the items under the main account, No. 216, land, but there is a credit of $45,311 for salvage value of abandoned line, which, I assume, would be deducted from the total. I have not added the figures myself.

Account 220—dams, reservoirs and water conduits: Preliminary survey, explorations and borings at various dam sites, $7,910. I should say that should be tangible and charged ordinarily to engineering.

Q. That has to be done for practically all dams, doesn't it?

A. It does. The next item is, "Tail-race, excavation and back fill, $642,200." I should say that was——

Q. Part of the structure, isn't it?

A. It was tangible and directly chargeable to the cost of the improvement.

The next item is, "Work for the city of Havre de Grace as per franchise requirements, $125,751." I do not know what that work is, but I assume that must have been work that had to be done in order to be able to build the reservoir.

The next item is, "Cost of unwatering after flood, $38,737." I should say that was tangible and directly chargeable to the construction of the dam.

(Mr. Archer:) What does that mean, Mr. Gregory?

A. That means that if a coffer dam has been built and the water pumped out and work is going on, the river rises and the water flows over the top of the coffer dam and fills the coffer dam and it has to be pumped out. That is a very common occurrence anyhow. Anybody who has ever built a dam knows that is likely to occur several times during construction.

(Mr. Robinson:) Particularly in a stream of that size?

A. I would not say of that size necessarily, but any size, except just a little brook.

Q. You think that is a necessary expense in connection [fol. 236] with the construction of the dam?

A. I certainly do. In the construction of the Julian Griggs dam at Columbus, I think, over the two-year period, we were flooded, perhaps, five times. I don't remember exactly how many times we were flooded. I have a set of progress photographs that show every flood. The coffer dams were flooded and, similarly, in the Julian Griggs dam, the second dam, at Columbus, were flooded a few times, I do not remember how many. It is something that is expected in that class of work.

The next item is: "Cost of unwatering after flood, $72,489." I should say that was tangible and was chargeable to the construction of the dam.

The next account is No. 221, power plant structures: "Unwatering after flood, $270,019." I assume that is in the same category as the last two items and would be di-

rectly chargeable to the construction of the dam and is a tangible item.

The next item is: Grading, grubbing, ditching and beautifying the approaches to plant, sanitary sewers, et cetera, $74,585. I should say that was tangible and should be charged to two or three different heads, as to which, without the details, I could not say. It may be charged to the dam, or it may be partly charged to the reservoir.

Q. Or to the other real estate they own?

A. Or to the real estate they own. I cannot allocate it.

(Mr. Archer:) Or to the land.

(The Witness:) The next item is: "Clean up and patching, $96,599." I assume that is what would be the ordinary cleaning and finishing up of a job. Every engineer who has been on construction work knows that a job has to be cleaned up and patched at the last end, and that is a direct construction cost, which is tangible, but to what it should be allocated I do not know.

The next item is: "Sanitation system and lighting of [fol. 237] highway, $255,017." I should say that was tangible and could be allocated to, perhaps, several main heads. I do not know the details of the amount—rather, of the work, and do not know where it would be properly allocated.

The next item is: "Provision made for fire protection and miscellaneous, $15,868." I do not know whether that is a construction expenditure during construction, or whether that is in the permanent work, but, in either event, it is a necessary cost of construction and is tangible.

Account 224—Electric Generators: "Provision made for fire protection, $3,442." I should say that was tangible and should be a construction cost in connection with the electric generators, their installation.

(Commissioner Leser:) What is your opinion of the meaning of the word "tangible"?

A. Why, I should say "tangible" was something—I might express it in this way—that you could get your hands on as differentiated from, for example, something like a going value, some value to the property which is over and

above the bare bones that is not tangible, that you cannot put your finger on it and you have to estimate it.

(Commissioner Leser:) The word, "tax," is derived from the same root, the Latin word meaning "to touch."

(The Witness:) The next item is Account No. 225, other electrical equipment: "Provision made for fire protection, $10,515." I should say that was tangible and chargeable under electrical equipment.

The next item is: "High potential testing equipment—transportable——

Q. Doesn't that come under the equipment of the power house and would not be assessed?

A. I do not know. This item of provision made for fire protection—I cannot say.

Q. Is that where the generators and machinery are?

A. It is under the account labeled "Other electrical [fol. 238] equipment." It says: "Charge to this account the cost of all other electric equipment owned by the utility and used in its hydraulic power plant." I would say that was properly chargeable to the electric generating equipment.

The next item is: "High Potential testing equipment, transportable, $1,139."

By Mr. Robinson:

Q. That certainly is something you can get your hands on?

A. I would say that was tangible and probably chargeable to generating equipment.

The next item is: "Grounding, lighting, testing and cleaning up, $2,882." I should say that was tangible and chargeable to the installation of the electrical equipment.

The next item is: "Inspecting at factory, expediting, and so forth, $2,471." Well, the inspection may be charged under engineering, and the expediting also. It is a very common practice to inspect equipment at the factory. In fact, a great deal of it is done in connection with electrical equipment and pumping equipment and so forth.

The next item is: "Construction tools, equipment, and so forth, $8,395." I would say that was tangible and

chargeable under some construction head, I do not know what.

The next account is No. 226: "Other power plant equipment: Preliminary operation and tests, $70,416." I should say that was directly tangible and part of it may be charged to engineering and part of it should—the balance of it to the installation of electric equipment. It is very common practice to make preliminary tests of electrical equipment, and final tests to ascertain whether the equipment furnished reaches the guarantee of the manufacturer. It is done right along in many kinds of work.

The next item is: "Unwatering equipment plant, $76,000." I do not know just what that means, but if it means anything in connection with getting water out of a coffer [fol. 239] dam or something like that, I should say it was directly chargeable to either the construction of the dam or the power house structure. I think probably that falls in the same category as unwatering already discussed.

The next account is No. 237—Land, under the main heading of Transmission System: The first item appear- to be: "Gates on fences, $213." I think that should be properly chargeable to land and is tangible.

The next item is: "Part of salaries and expenses of the P. E. Company Real Estate Department in Philadelphia, filing and copying deeds et cetera, $823." I would say that was tangible and it may be charged to Land or it might possibly be charged under General Expense of, perhaps, engineering or officers of the company.

The next item is: "Replacement on property damages, $155." It is either $153 or $155. I should say that is tangible and properly chargeable to land.

The next account is No. 239—Rights of Way: "Actual purchase price, $19,864." I should say that is tangible and directly chargeable to land.

The next item is: "Relocation of telephone lines, $849." That is tangible and should be charged to the cost of relocating the telephone lines, in order to be able to fill the reservoir.

The next item is: "Gates on fences, $1,161." I should say that is tangible and should be chargeable to land.

The next item is: "Damages paid land owners, $1,044." I should say that is tangible and properly chargeable to land.

The next item is: "Aerial maps, $864." It depends something on how that is construed. Ordinarily, I should think that might be construed under engineering, but it might be charged to land.

The next item is: "Miscellaneous expenses of land agent, surveying, searching and examinations of titles at county [fol. 240] seat and Annapolis to meet the requirements of the trustee under the mortgage, recording fees, revenue stamp, copy of deeds, securing brief of title et cetera, $38,666." I would say that was tangible and chargeable to the cost of land.

The next item is: "Salaries and expenses of the P. E. Company Real Estate Department in Philadelphia, filing and copying deeds et cetera, $6,153." I would say that was tangible and ought to be chargeable to land.

Account No. 240, Transmission System Structures. Temporary roads, walkways, supports and other means to secure access to transmission line towers across Susquehanna River during construction, $31,994." I should say that was tangible and chargeable to the cost of building transmission system structures.

Account No. 242, poles and fixtures: Inspection at factory and expediting, $1,558. It depends on the method of allocating, but I would say that was tangible and a proper charge to the cost of poles and fixtures, or, it may be charged to engineering. Inasmuch as it is labeled, "Inspection at factory and expediting," I think that might be chargeable to engineering.

The next item is: "Temporary roads and lanes, $3,863." I would say that was tangible and directly chargeable to poles and fixtures.

The next item is: "Surveys of tower line, $924." I would say that was tangible and chargeable to engineering.

The next item is: "Construction equipment and trucks, $35,066." I should say that was tangible and chargeable to the construction of poles and fixtures.

The next item is: "Damage during construction, $284." I would say that was tangible and a construction expense chargeable to poles and fixtures.

Account 243—Overhead conductors. Construction equipment and trucks, $11,086. I would say that was tangible [fol. 241] and chargeable to the construction of overhead conductors.

Damage during construction, $888. I would say that was tangible and chargeable to the cost of construction called overhead conductors.

Inspection at factory and expediting, $2,426, which I think is properly chargeable in as engineering and is tangible.

Account 244—Overhead Telephone System: Telephone system preliminary engineering, $1,249. I should say that was tangible and chargeable to, perhaps, preliminary studies and preliminary investigation, or it might be charged under engineering, depending on what was done and when.

Account 279—Other General Structures. There is no detail given other than $7.70. I do not know how to classify that, except, if it is under the general heading of "Other General Structures," I would assume it would be a construction expense of some kind and chargeable to some general structure.

Account 287—Other General Equipment: Equipment for experimental work in wireless, $1,192. That might be charged to engineering. I should say it was tangible, and it might be charged to some other account.

Account 288—Engineering and Superintendence during the Construction: "Fees, salaries and expenses of experts, consultants and other advisory, technical, accounting and professional services, $1,003,535." I should say that was——

(Commissioner Leser:) That must have included lawyers' fees.

(The Witness:) It doesn't say so.

(Mr. Robinson:) I thought it was, too, your Honor.

(The Witness:) I should say that was very tangible.

[fol. 242] (Mr. Robinson:) And absolutely essential.

A. Very essential and should be charged to engineering.

Another heading is Services of Construction Engineers, and the sub-heading is, "Fees on dam, $51,964." I should say that was tangible and should be charged to engineering.

Fees on power house, $41,762. I should say that was tangible and properly chargeable to engineering.

Fees on equipment, $10,361. I should say that was tangible and chargeable to engineering.

Fees on temporary constructon, $256,793. I should say that was chargeable to engineering. A great deal of temporary construction is required in the building of a large piece of work.

(Commissioner Weant:) What is meant by these fees?

A. I assume they are salaries paid. It says: "Fees, salaries and expenses of experts, consultants and other advisory, technical, accounting and professional services."

(Mr. Robinson:) I am afraid the lawyers did not get any of that.

(The Witness:) We might find some for them before we get through. The same account continued: Engineering and superintendence during construction, Account 288, offices at work, including salaries and expenses of managers, engineers, superintendents, auditors, stenographers, police force, employes, draftsmen and surveyors, telegraph, telephones, office supplies, furniture and fixtures, et cetera, at the work as follows: Pro-rated to dam, $11,902. I should say that was tangible, some of it would be engineering and some of it would be general expense of running of an office and, perhaps, also chargeable under engineering.

Pro-rated to power house, $9,565. I would say that would [fol. 243] also be tangible and would come under the same explanation I have just given.

Pro-rated to equipment, $2,373. I should say that was tangible and chargeable to whatever type of equipment it belonged to, but under engineering.

Pro-rated to temporary construction, $58,816. I should assume that was probably mostly engineering, but tangible.

Home and field office salaries and expenses for transmission line and sub-station, $7,944. I should say that was tangible and chargeable to engineering, although it might have to be distributed, perhaps, somewhat otherwise.

Equipment on roof, $10,558. Those are salaries and expenses. I should say that would be tangible and chargeable to engineering.

Automobiles operating and maintenance, $20,467. I should say that was tangible and probably largely chargeable to engineering. They have to move engineers around, especially engineers on this kind of work.

Special engineering for road crossings of transmission line, $940. I would say that was tangible and chargeable to engineering.

Aerial survey maps of transmission line, $7,980. I should say that was tangible and chargeable to engineering.

Shrinkage and depreciation of construction equipment for transmission line, $5,179. I should say that was tangible and a construction expense, chargeable to, as it says, to the construction equipment.

Cost of experiments in wireless, $325. I think that is tangible and properly chargeable to engineering.

Account 289: General officers' and clerks' salaries during construction, $127. Well, I would say that was tangi-[fol. 244] ble and chargeable to general expense or operation of office.

Account 290: General officers' and clerks' expenses during construction, $122. I should say that was tangible and chargeable to the cost of running an office.

Account 291—Office Supplies and Expenses during Construction, with a sub-head of, "Cost of Office Supplies and Expenses incurred during construction, $4,175." I should think that would be chargeable to engineering and is tangible.

Account 292—Law Expenditures during Construction, $34,146.

(Commissioner Leser:) How much?

(The Witness:) $34,146. Well, that is tangible.

(Mr. Robinson:) That is tangible, isn't it?

A. That is tangible, and is chargeable to some account having to do with general expenses.

(Commissioner Weant:) That is the charge for the law expenditures?

A. During construction.

(Commissioner Weant:) It looked very cheap.

(The Witness:) Account 293—Injuries and Damages during Construction, $179. I would say that was an item that was tangible and should be charged to construction somewhere.

Account 294—Insurance during Construction. State Compensation Insurance, $332,667. I should say that was tangible and a direct construction item charge, the construction of the job as a whole.

Fire Insurance, $40,372. I would say that was a construction expense chargeable to the cost of building the work, but just where allocated I do not know.

[fol. 245] Bonds, automobile, damages, et cetera, $5,088. I would say that was a construction expense and chargeable to the construction as a whole. The last three items are all labeled, Insurance during Construction, and that Fire Insurance of $40,372 would then be a construction expense charged to the construction of the work as a whole.

Account 295—Taxes during Construction, $50,986. I would say that was tangible and chargeable ordinarily in the item called, Taxes during Construction.

Account 296—Interest during Construction, $3,315,468. I should say that was tangible and is a direct charge in the cost of construction of the wortk as a whole. We only estimated for interest during construction $2,181,619.

Account 297—Other Expenditures During Construction: "Inspection of Equipment" at manufacturing plant and preliminary tests, $53,210. I should say that was tangible and chargeable to engineering..

Expediting manufacture and shipment of equipment, $8,634. I should say that was tangible and properly chargeable to engineering.

Then there is a heading labeled, "Temporary Construction." There are some very large amounts in here. "Temporary roads, bridges, tracks, switches, sidings, wharfs and docks, $787,663." I should say that was tangible and a construction item, but just where it would be chargeable I do not know.

Job buildings, warehouses and shop, $228,597. That is a direct construction item, chargeable to construction, and it is tangible, but how allocated I do not know. It may be allocated against what was called "Construction Work."

Trestles, $317,417. That is a construction item. I should assume that was properly chargeable, partly to the dam and partyly to the power house. I do not know what

these trestles were for, but they may be trestles that very frequently go alongside of such construction in order to handle the concrete and materials.

[fol. 246] Transmission line from Pennsylvania-Maryland State Line to camp power and light distribution lines, telephone lines, expenses to secure right of way for transmission lines from Pennsylvania-Maryland State Line to camp transferred temporarily to Account 297 from 239. Well, that is a construction item. It is tangible and it is chargeable to some part of the construction work. I have not the details to state other than in general.

Camp sanitation, sewers, drainage, fire protection, water supply, $368,232.

Q. Did you give the amount for the previous item?

A. Transmission line from Pennsylvania-Maryland State Line to camp power and light distribution lines, telephone lines, expenses to secure right of way for transmission line from Pennsylvania-Maryland State Line to camp transferred temporarily to Account 297 from 239, $321,204. That is a construction item.

Camp sanitation, sewers, drainage, fire protection, water supply et cetera, $368,232. That is tangible and that is a direct construction cost, chargeable either to the dam or the power house or to the construction work in general. Almost every job of a kind like this has to have a certain amount of camp sanitation, sewer drainage, fire protection, water supply, and so forth.

Stone crushing plant, conveyors and concrete mixers, $372,340. That is a direct construction expense incurred in order to be able to crush stone for the concrete, but just how it would be allocated I do not know, except it would go to the cost of construction and is tangible.

Unloading, erecting and connecting construction equipment, $290,783. I would say that was tangible and a direct construction expense and chargeable to the cost of construction equipment.

Under the heading of Commissary Camp, Hospital et cetera, is "Tents et cetera, $2,583." I should say that was tangible, a construction expense and should be charged into the general cost of construction.

Community housing quarters and facilities, $495,233. [fol. 247] I should say that was a construction expense, chargeable into the cost of construction, and is tangible.

Hospital furnitures and fixtures and miscellaneous, $223,238. I should say that was a construction expense and chargeable to the cost of construction and is tangible.

Cost of Camp Operation, $1,595,240. I should say that was a construction expense and chargeable to the cost of construction and is tangible.

There now appears a credit "Income from Camp Operation, $1,785,938," which is a credit, as stated, of income, and that, of course, would be deducted then from the cost of construction.

Expense of Commissary on transmission line and roof, $6,475. I would say that was tangible and chargeable to the cost of construction.

Stock of Construction Material, $5,760. I would say that was tangible and chargeable to cost of construction.

Cost of Machinery, Construction Equipment and Implements, $208,034. I should say that was a construction expense and chargeable to construction.

Shrinkage and Rental on Construction Equipment, $810,862. I should say that was a construction expense, tangible and directly chargeable to cost of construction. Equipment shrinks and you have to oftentimes rent a great deal of equipment, and that is part of the cost of construction.

Accounts receivable, railroad relocation, $18,016. I just do not understand that item and I pass it up.

The Susquehanna Power Company, Conowingo. There is a credit there of $4,588. I assume that would be tangible and deducted from cost of construction, although I do not know.

Stone & Webster, Incorporated, $2,460. I should say that was tangible. I assume that would be tangible to engineering.

[fol. 248] Factory inspection on material and experimental wireless, $4. I should say that was tangible and chargeable to engineering.

Photographs, laboratory tests and miscellaneous of the P. E. Company, $7,980. I would say that was tangible and chargeable to engineering.

Paid Maryland Academy of Sciences, Indian Rocks, $1,500. I do not know what that item is.

(Mr. Archer:) That was for preserving some rocks which had Indian inscriptions on them, which were going to be flooded.

A. I should say, then, that would be a direct construction expense and chargeable to the cost of the reservoir and is tangible.

Cost of operation of Bell House.

(Commissioner Leser:) Don't you think that was rather a gift to the public? What good did that do the reservoir?

(Mr. Archer:) I might answer that. They objected to the granting of the permit to these people on the ground that it was going to flood these rocks, and they agreed before the permit to build this dam was issued that they would do this, so it was part of the proposition that they would agree to do this and get their permit.

A. I should say that was a construction item, the same as replacing a road that is going to be flooded.

(Mr. Robinson:) It is not very much, anyhow.

(The Witness:) Cost of operation of Bell house, $3,046.

(Mr. Archer:) That was the house in which the employes lived, the engineers?

A. I should say that was a construction or enginering expense, and tangible, chargeable to engineering.

[fol. 249] Directors' fees and expenses, $6,913. I would say that was tangible and chargeable to general expense.

Purchase and trade, automobile, $2,291. That might be charged partly to engineering and partly to construction. I would say it was tangible.

Then there are two credits: Proceeds from rent received during construction, Harford and Cecil counties, $13,002. I would say that would be deducted from the above cost in this column.

Then, also, "Proceeds from rent along transmission line, Cecil County, $146." That is a credit which would be deducted also.

Paid to certified accountants, $320. I would say that was tangible and chargeable to general expense.

Equipment of temporary quarters for office of the P. E. Company at Conowingo, $11,118. I should think that would be chargeable to engineering and is tangible.

Spillway apron, temporary construction, $8,661. I would say that was tangible and directly chargeable to the cost of construction of the dam.

Commissary camp, hospital, $241. I would say that was tangible and chargeable into the cost of construction.

Stock, $9,783. I assume that means construction materials. If so, that is tangible and chargeable into the cost of construction.

Construction equipment, $500. I would say that was tangible and chargeable to construction.

Shrinkage and rental, $3,567. I would say that was tangible and chargeable to cost of construction.

Accounts receivable (Arundel Corporation), $5,554. I do not know what that item is.

Then there are three credits: "The Susquehanna Power [fol. 250] Company, temporary construction, $1,814." I should say that would be deductible from some item above.

Commissary camp and hospital, $2,837. I would say that credit would be deductible from some item above.

Stock, $1,372. That is construction material and it is a credit which would be deducted from the item above.

Then comes another item, shrinkage and rental, $8,157. I would say that was tangible and directly chargeable to construction.

Then there is a credit of construction equipment, $14,141. That would be deducted from some construction equipment item above.

Trustees' fees, $5,169. Well, I would say that was tangible and would perhaps, be chargeable to general expense.

Q. Are there any of these items that you have enumerated which would not be necessary in the creation of a project such as this?

A. Well, without examining each particular item, I should say those kind of items are the kind of items that are required on large construction work.

Q. For instance, take the one large item, the question of a large expense, in connection with the relocation of the Columbia and Port Deposit Railroad. If that had not been done, could this project have been put in operation and built?

A. No.

Q. Nor the dam built?

A. No.

Q. Why?

A. Because the railroad would have been flooded and traffic would have been interrupted, and I assume that the laws are such that traffic could not be interrupted.

Q. Could a power plant have been erected there without flooding the railroad as it existed before the dam was built that would have had any practical use?

A. Well, I have made no study of that situation.

[fol. 251] (Mr. Robinson:) There is eighty feet of water there now.

(The Witness:) I would simply say that perhaps a very low plant. I understand that the tracks have been flooded in the past during floods in the Susquehanna River.

(Mr. Robinson:) There would be no question about them being flooded by this dam. They are under seventy-five or eighty feet of water there now.

(The Witness:) They are flooded by this dam, yes.

(Mr. Howard:) The question was, could any other kind of a dam have been built there?

(Mr. Archer:) Without flooding the tracks, could this type of dam have been built there without removing the railroad tracks?

A. No. Well, physically, it could have been.

By Mr. Archer:

Q. Yes, but I mean——

A. (Interposing:) But not without relocating the tracks,

(Mr. MacNabb:) without destroying the railroad there, it could not have been built.

(Mr. Archer:) Could not have been built without destroying the railroad as it then existed.

(The Witness:) No.

(Mr. Robinson:) Witness with you.

(Commissioner Weant:) You have on your statement electrical transmission system, $340,467.

(Mr. Archer:) A part of the transmission line there and a part in Harford County.

(Commissioner Weant:) I just want to ask this question, because they are tangible, and they do not go on that list, do they?

[fol. 252] (The Witness:) Yes.

(Commissioner Weant:) That is what I wanted to ask.

(Mr. Robinson:) I do not think he understands that.

(Mr. Archer:) Mr. Weant, that is a part of the pole lines.

(The Witness:) I understand that to be a part of the pole lines.

(Mr. Robinson:) Yes.

Cross-examination.

By Mr. Howard:

Q. Professor Gregory, your work, of course, has been based upon these cost figures, which were, I think, furnished by the company to the Public Service Commission, are taken from those accounts kept in conformity with the requirements of the Public Service Commission. Your work has been altogether on those costs of investment, figures, has it not?

A. Yes.

Q. And, you have made no independent attempt to put a value on this property otherwise than by taking those figures of the costs, as to what the property cost?

A. I have assumed that that cost was the cost of the property.

Q. Right. I just want to make that clear. Now, your purpose in this tabulation you have filed was this: You want to properly allocate the undistributed figures of costs, don't you?

A. Yes.

Q. Now, for that purpose you have allocated them upon this, haven't you: Isn't it, isn't the net result of your tabulation, to distribute or apportion all those expenses upon these items, the land that forms the bed of the pool, the dam, as a structure, the power house as a structure, the transmission lines, and things of that kind, and the machinery. Isn't that right?

A. Well, we have allocated them in accordance with the [fol. 253] headings which are given on this sheet.

Q. Right. But, what I mean is you start out with a total—you start out, in a vertical column there with a total

amount of thirty-eight million six hundred and odd thousand dollars, do you not, and you end up, after your allocation, with a total amount equalling the same amount, do you not? What you start out to allocate, you have allocated to tangible property belonging to the company, haven't you?

A. Yes.

Q. All of those items of expense then, in other words, which are not allocated in any way on the books, you have undertaken to divide among certain items of tangible property belonging to the corporation. That is true, isn't it?

A. Yes.

Q. Now, your method, as I understand it, it this: In the first place, you have the question of dividing between property in Maryland and out of Maryland, and property in Harford County, and property in Cecil County, haven't you?

A. No.

Q. You have no such property?

A. No, because there is not anyhting here given to us in that manner. It is given to us as to what is in Maryland. There is nothing in this statement to take into consideration as to Harford and Cecil Counties.

Q. As between Harford and Cecil Counties?

A. Yes.

Q. As I understand, your method has been this. You take the items and allocate them on the expenses, and say the total expenses in Harford County, and you allocate them, and the total expenses in Cecil County, and then you pro rate the unallocated items in the same ratio. Is that right? Am I correct?

A. In a general way, you are right.

(Mr. Robinson:) I think, speaking of that, the percentage is different, if you will examine the method of allocation.

By Mr. Howard:

Q. Now, there are certain items even of tangible prop-
[fol. 254] erty that you haven't attempted to allocate again.

Take the item of land. You haven't allocated any of these general expenses against the land except the land that is flooded, have you? You adopt a separate valuation that is not based on any of this allocation, and on the land above the water, do you not?

A. Well, the allocation that is given there is the area that was furnished us, and the assignment figures by the County Commissioners.

Q. Yes, but what I mean is, you don't allocate any of this cost on the land that is above the water, do you?

A. No.

Q. You take the objective assessment, if I may call it such, that the Commissioners had fixed for land above water, or, you take the cost?

A. We took the total costs, under the head of land and water rights given and then we inserted figures, as we say, for assessment, as given us by the County Commissioners, and those were deducted from certain items which the figures show on the place, giving us a net of a certain amount, which had to be distributed between the two counties.

Q. Let me make clearer what I mean. The assessments that the County Commissioners made are those that you recommended in your calculation, were they not?

A. No.

Q. Didn't they adopt your recommendations?

A. Well, you mean with reference to the——

Q. (Interposing:) I mean as to the——

A. (Continuing:) As to the total.

Q. Total?

A. Yes.

Q. They adopted your total?

A. Yes.

Q. Now, as to the land above water, you had nothing to do with their fixing that, did you?

A. No.

Q. That is what I mean. The valuation that is on there?

A. Yes.

Q. They fix that on their own basis, according to their [fol. 255] own ideas and your methods were to deduct what they fixed for the land above water, and put all of the balance on the pool, wasn't it?

A. Substantially that, yes.

Q. In other words, you take the total cost of land above water——

A. (Interposing:) Except, under the first main item of expense. Allocating that, to that we add interest during construction, and then distribute $11,240,209 again on the main heading shown in this second large column.

Q. Yes, but nevertheless, your treatment of the item of land is such that those figures are added to the Commissioners' assessment of the land above water. Your allocations are purely on a subjective basis, are they not?

A. Yes.

Q. So, all of these additional items of cost, and in fact, a missioners have segregated from that the land above water, is here allocated as a part of the costs of land under water, and the dam, and these other items?

A. I don't think the land above water is allocated in accordance with the costs under water.

Q. Let us see if that is not true. So, taking here the item for land and water rights, is supposed to be the total costs of all land and water rights, isn't it?

A. Yes.

Q. Now, you have had—you have first of all—the Commisioners have segregated from that the land above water, and they have assessed it on their own basis. That, you had nothing to do with. Isn't that right?

A. Yes.

Q. Doesn't that leave all of the balance of that cost over and above what they have assessed there, doesn't that leave or left the assessment of the land on the land below water?

A. Yes.

Q. Isn't that true?

A. Yes.

Q. And so further, on the land below water, on such portions, all of these undivided items of general expense that you allocate, you allocate against that land, do you not——

A. They bear their proportion.

[fol. 256] Q. The land below water bears the entire amount, as to the landed property.

(Mr. MacNabb:) He did not say that.

(The Witness:) No.

By Mr. Howard:

Q. Is that true?

A. No.

Q. Well, now, let us see for a moment. In your calculations here you had what you first stated to be cost of land and water rights. You had about three and one-half million dollars after distribution of all of these unallocated expenditures. Isn't that right?

A. Yes.

Q. Now, your total value for land and water rights have been disregarded by the Commissioners in this way: They have deducted from it the assessment on land above water which they made themselves; isn't that right?

A. Yes.

Q. And that leaves all of the balance of the assessment that they have put on the land, on land flooded by this water, and I say it is true, isn't it, that in that assessment they allotted all of these undivided expenses, all of them falls ultimately in the assessment on land that is under water?

A. Only that portion allotted to land and water rights.

Q. All right. Then, to that item is added only the total of that item that falls under land and water rights?

A. Yes.

Q. Now, let me make that clear again. The net result of your calculation then is to do this, isn't it, that you take from these unallocated expenses and you allot them to certain tangible items, for instance, electrical equipment, power house. That is something that is very tangible, isn't it?

A. Yes.

Q. That is very tangible?

A. Yes.

Q. Anyone can go there and see that equipment, isn't that true?

A. Yes.

[fol. 257] Q. Anybody could who wanted to duplicate all of it from the manufacturer who made it, couldn't they, if they were willing to pay the price?

A. Yes.

Q. Well, now, just take that item for a moment as one. You have added to that electrical equipment in the power

house, which, according to this statement, cost three million, eight hundred and odd thousand dollars. You have added to that over one and one-third million dollars for preliminary experiments and other unallocated expenditures incurred in the development of this project. That is true, isn't it?

A. Not necessarily. It may be partially true, but the $1,377,964 includes the proportional part of interest during construction, and its proportional part of the first main item entitled "Expenditures not allocated."

Q. All right. Now, take those expenditures not allocated. They consist, in a large part, of preliminary work, do they not?

A. No.

Q. I think it has been testified here that they indicated that that was for a considerable part of the preliminary work?

A. No, I should say that is not so. Engineering and superintendence during construction is given as $2,465,425, and the other expenditures during construction include temporary construction costs in connection with dam, power house items, rail cost, construction, equipment, commissary, inspection, and expediting of materials and equipment and costs of unused materials on hand as of December 31, 1927, etc., $5,210,313. The two main items are engineering and superintendence during construction and other expenditures during ocnstruction. I would say that they are not preliminary expenses.

Q. Well, now, without disposing of that, let me again direct your attention to this item for the purchase of electrical equipment here of three million eight hundred and odd thousand dollars as to the cost of that electrical generating equipment, and I take it that includes a large part of the costs of installing it, doesn't it, not merely what was paid to the manufacturer?

A. I assume so.

Q. You assume so?

A. That is, so far as construction costs go.

[fol. 258] Q. Now, then, you have added to that one and one-third million dollars for these unallocated expenditures.

Suppose that those electrical generators were worn out now and they put in new ones, put them in their place, then,

wouldn't their new ones be just as valuable as the old ones are now?

A. They might be.

Q. Well, wouldn't they be if they paid as much for them?

A. Not necessarily.

Q. Would you say, still say, those new generators, then, were assessable at, merely at three million eight hundred thousand dollars, but that you would add to that one million three hundred and seventy-seven thousand dollars for these old expenses made by the company in its past history?

A. I do not say that it is comparable at all.

Q. Well, I am asking you. Then, you think the new generators, not just as good as the present ones, would be taxable for one million three hundred odd thousand dollars less than these that are now there?

A. Not necessarily at all.

Q. Yet, you have added to that to the cost price of those generators——

A. As I explained, the $1,377,964 we made up of a proportional part of the first item, expenditures not allocated, and of an estimated amount of interest during construction.

Q. Construction of the entire project?

A. Yes.

Q. Well, the point I want to direct your attention to, Professor Gregory, is this: You have here allocated expenses that involved the development of the entire project. Now, the development of the project includes more than the acquisition of the necessary real estate and the mere building of the dam, doesn't it, and the buying of this machinery?

A. Well, there is development expense, preliminary expenses.

Q. It includes large development expenses.

A. It depends upon what you call——

Q. Well, it includes——

A. May I finish?

[fol. 259] Q. All right.

A. It depends on what you call development expense. If you would call it preliminary expense, that I think would be a little clearer to me.

Q. Now, let me take this item again to illustrate what I mean. You have there in the first column three million eight hundred thousand dollars, supposed to represent the

cost of buying those electrical generators from the manufacturers and installing them, putting them in, do you not?

A. Presumably so, yes.

Q. Now, you are adding to that not what you consider to be the present cost installed to the project, but the present cost of that machinery, those generators, to that you add one and one-third million dollars for these general expenses, which may be perfectly proper capital expenditures such as the company is justified in capitalizing, but the point I am making is that that does not add to the value of those generators at all. Isn't that true?

A. I think they do add to the value of the generators.

Q. Then, let me repeat my former question. Suppose those generators were destroyed by lightning and replaced by new ones costing three million eight hundred and odd thousand dollars to purchase and install? Would you consider the new generators that had been bought at a cost of $3,800,000 as worth $3,800,000, or worth that plus $1,377,000?

A. In the valuation of the property, I would say that there should be added to the $3,800,000, $1,377,000. You have passed the stage when you are beyond the first construction. You are now running into operations, running into replacements now.

Q. The point that I want to direct your attention to is that there are many expenditures which are a necessary part of a project, and a necessary part of the development of the project, and which the Public Service Commission very properly and rightly allows to be capitalized, but which do not appear in the value of any particular physical tangible items of the plant. And I would again ask you if you think the electrical machinery that can be bought and installed for $3,800,000 is worth one and one-third million dollars more than it would now cost to buy, duplicate the machinery and install?

A. I do.

[fol. 260] Q. You do?

A. Yes, sir.

Q. Well, for capitalization purposes I might agree with you, but you think that there is an actual, tangible, taxable value there in that machinery over and above, as I say, what you could buy new machinery just like it for,

totally new; in other words, in addition to these old expenditures you add one and one-third million dollars to the value of that machinery?

A. I do.

Q. Well, now, the same thing is true of all of the other items. Let me take, for instance, it so happens that what strikes my eye, is the first item on that statement there, of organization, $4.50. That is organization of the company, isn't it, organization of the corporation, buying its charter, or something of that sort?

A. I don't know what it is. It is something that has to do with organization.

Q. Organization of the company. Well, now, you consider that expense, as small as it is, as an element of value that inheres in the physical tangible property of this corporation?

A. I do.

Q. Is that right?

A. I do.

Q. If, for instance, it had cost them one hundred thousand dollars to get their charter, you would think that one hundred thousand dollars appeared as an element of value in this equipment, in the power house, in the dam itself and in the submerged land, that is covered by water impounded by the dam, is that right?

A. I do.

Q. So, in other words, you regard all capital expenditures of any kind that are incurred in the development of the project, you regard them not only as being proper capital expenditures that go into the development of the project, but you regard them as existing as an assignable element of value in the several items of tangible property that the corporation owns at any time, is that right?

A. Yes, goes to make up the total value of the property.

Q. So that, if, for instance, the corporation happened to own at one time an automobile, and I owned an automobile, and each cost us a certain amount—the corpora- [fol. 261] tion's is worth more than mine, because it has in it, as a part of its value, a reflection of these old historical expenditures?

A. Taking the value of the property as a whole.

Q. Taking the value as a whole. Yes, I mean if anybody is going to acquire the whole project, they may have to

pay for the entire capital expenditures, but what I am directing your attention to here is that, in what this commission is doing—it is trying to ascertain the tangible value of certain fixed physical, very tangible items of property, namely, land above water, land below water, a structure called a dam; a structure called a power house, and some transmission lines, and rights of way. Now, your idea is, then, that all expenditures properly chargeable to capital that are made in the development of a project like this then that add to the value not of the project as a whole only, but that add to the value, the taxable value, each item of tangible property that goes to make up the property of that corporation, that have been used in any way in the project. It that right?

A. I think all of these expenditures might be allocated to different tangible properties as an allocation of value.

Q. Do you think the illustration that I gave you of an automobile is a fair one, do you?

A. Will you let me have the illustration again?

Q. I will repeat it. I put it just now and you agreed to it. I own an automobile, we will suppose, that cost a certain amount, of a certain make, and there is used in the operation or the development of this property, during that period, this company owns an automobile of the same make, and the same year, and they are both of the same age, and both in the same condition. I pay taxes on my automobile. It is assessed, we will suppose, at $4,000. You think that the assessable value of the company's automobile ought to be increased for taxable purposes, by adding to it the pro rata part, taking the property as a whole, the pro rata part of these unallocable expenditures, during the development of the project?

A. Taken into consideration in getting at the value of the property as a whole.

Q. All right. I agree with you, if the value of the project [fol. 262] as a whole is to be determined, that your method of treating costs—of course, cost is not always value—you might treat costs that way, your method of treating costs would be in line with that, but I am directing your attention to the fact that we are here interested not in getting at the value of the project as a whole, but in determining the value of certain very specific, very concrete, very tan-

gible items of property, and I have put to you the illustration of an automobile. Do you agree that that is a fair illustration and a proper method in determining the value of that automobile?

A. Well, I have answered, in determining the value of the property as a whole.

Q. In other words, you think that the company's automobile ought to be taxed higher, that the company ought to be taxed higher, on the same automobile than I would be, because its automobile has in its history, or in its blood, these general expenditures?

A. Well, in so far as the value of the property as a whole is concerned.

Q. All right. Suppose that you were called upon, if I may be pardoned for choosing so small a job—suppose that you were called on to assist the County Commissioners or the Appeal Tax Court in valuing those two automobiles. Do you mean that you would recommend that mine be taxed at a lower rate than the company's?

A. Well, I told you I should want to take the property as a whole into consideration.

Q. And, taking it as a whole, the result would be that you would distribute this portion of the unallocated expenses against it, wouldn't it?

(Mr. Archer:) A corporation's automobile is not taxed.

(Mr. MacNabb:) Corporations are not taxed on their automobiles. Automobiles are not taxed by the County Commissioners.

(Mr. Robinson:) You would have to get a horse.

(Mr. Archer:) That is not appealed from here.

(Mr. MacNabb:) That does not apply to an automobile.

[fol. 263] (Mr. Howard:) I do not need to take an automobile. I can take a horse, as the Attorney General kindly suggests, or, take any other item of property. Apart from the question as to how automobiles are taxed—my use of it as an illustration, was, you think, a fair one, and you agree with the general idea, do you not?

(The Witness:) Well, I have answered it as well as I could.

(Mr. Archer:) Mr. Howard, I might direct your attention to the fact that in Maryland, personal property of that type is not taxed.

(Mr. Howard:) I do not think that I have to use an automobile for an illustration. I have simply used that for purposes of illustration. I can pick out some other piece of property. Personal property of ordinary business corporations is taxed. The theory is the same. I am only trying to get the witness' idea, and see just why he has made this distribution, and this application.

By Mr. Howard:

Q. Now, then, if I understand you rightly, when you came to apportion these unallocated expenses, I mean these different headings that you have classified the property under, as to your basis, certain amounts have been allocated as expenditures to each one. You drew the natural inference, that if you were going to assess these unallocated expenses, that it would be on the same basis in which the items have cost, without taking the unallocated expenses into account. Am I right?

A. That is right.

Q. Yes?

A. We have no other figures on which to work.

Q. So that your calculation then resulted in putting all of these expenditures which are charged as capital expenditures, in ultimately putting them all on these specific items of concrete property, doesn't it?

A. Yes.

Q. You put a part of it on generators?

A. Yes.

Q. With the exception of the small amount allotted against transmission lines, then you really bring down all [fol. 264] of those expenditures and you bring that up and put a part of those expenditures on the dam and a part on the power house, and on the land that is covered by water, don't you?

A. And also on electrical generating equipment and power house.

Q. I have already mentioned that?

(Mr. MacNabb:) That is the same line.

(The Witness:) That is the same proposition.

By Mr. Howard:

Q. Now, in your discussion of the exhibit that Mr. Roux filed yesterday, I might briefly sum it up this way, might I? That you feel that all of those expenditures, with the probable exception of one item of seven dollars that you said that you did not know about—there might be some others, very small ones—your find that all of those expenditures should be treated as additions to the value of the cost of tangible property of the company, do you not?

A. They enter into the total value of the property, yes.

Q. And, when you say that, you mean by the tangible property, these same items against which you have apportioned the unallocated expenses in your blueprint or tabulation?

A. Yes.

Q. In other words, you think every expenditure that is of a capital nature is necessarily reflected in the cost of the items of tangible property that the company owns, is that right?

A. In the value.

Q. That it is reflected in the value of them?

A. Yes.

Q. The money the company spends for general purposes, the money the company spends for each particular item of property, real or personal that it owns is worth——

A. (Interposing:) Taking the value of the property as a whole.

Q. Yes, taking the value of the property as a whole, as I say, a company that has had property, and has spent a very great deal amount of money in this way, if it should acquire any automobiles, those automobiles would assume [fol. 265] a very unusual value, the moment the company got them?

A. But, you can't take the particular items that way. You must take the property as a whole.

Q. That is the point I am making. You still say that you would have to ascertain what the books show, as to the cost of the development of the project as a whole. But,

the point I am making is that the items of this property, this Commission is attempting to find the specific value, the taxable value, of certain items of real estate only. And, you say that your method is not adaptable to that. Well, then, if it isn't, what are you using it here for?

(Mr. Robinson:) He did not say that.

(Mr. Howard:) Well, he said that it was not adaptable. He said that himself. My question was——

(Mr. Robinson:) No, he did not say that.

By Mr. Howard:

Q. Well, then, what did you say?

(The Witness:) If I may explain what was done, we took these figures, which were given to us, and we had no other figures.

Q. All right.

A. And we had no method other than to take some method and allocate the undistributed costs to these properties.

Q. The point I make is that you allocate all capital expenditures of any nature whatever to the tangible items of the real estate and personal property that the company owns?

A. That is what we have done.

Q. So that, taking my same illustration, if the company has had a very large amount of expenses and they should buy five automobiles, the tangible value of that property would jump at once by the addition of these undistributed items, or a portion of them to the five automobiles Is that right?

A Will you read that question again, please?

[fol. 266] Q. Let me repeat it. I can do it quicker than the stenographer can read it.

I say, if the company is one which has had a large amount of unallocated development expenses on its books, if it buys a piece of real estate or personal property that is needed in the operation of its project, then immediately the moment it acquires that property, to the cost to the amount it pays for it there is to be added the pro rata for these undistributed expenses, so that the value at once

jumps up not to what it has just paid for it, but to a good deal more? Is that right?

A. In so far as the value of the property as a whole is concerned, yes.

Q. In so far as the value of the property as a whole is concerned, and the same would be true if the property were acquired the way that I have described, and if the property consisted of five automobiles, as soon as the company got them, they would immediately jump to a value that is greater that they were when they were in the hands of the dealer before they had been bought by anybody?

A. If you take the property as a whole.

Q. Yes?

A. You do not take the individual items. You take all of the expenses that are necessary, and then you take them and distribute the total value of the property to, under tangible heads, then you would subdivide engineering inspection, superintendence and everything.

Q. In other words, if you followed your method you might arrive at a value that was greater than the cost. That is right?

A. You would.

Q. And that would be true in the case of the automobiles, as I have stated?

A. Yes.

Q. Now, Dr. Gregory, you have not given any consideration to the fact that this company had its franchise conferred upon it by the State of Maryland, and also has a franchise from the Federal Government. You have not given any consideration to that franchise as an intangible piece of property of value owned by this company, have you?

A. I do not know about the franchise.

[fol. 267] Q. You have not allotted any of these expenditures, as for the development of the franchise, have you?

A. If the franchise cost anything, and is in here, it has been distributed.

(Mr. Robinson:) He is taking your figures.

By Mr. Howard:

Q. What I mean is, are these unallocated expenses, and these other expenses that the books show; you have not

treated anything as being spent for the development of the franchise. In your opinion, they are all simply added to the value of the land, value of the physical property that the company owns, and none of them are developments or additions to the value of the franchise, is that right?

A. Well, I take the property as a whole. That is what I have done.

Q. Isn't the franchise a part of that property as a whole?

(Mr. Robinson:) That is only a right to do certain things.

By Mr. Howard:

Q. Isn't it, Doctor?

A. It may be.

Q. The point I make is, you have not allowed it one dollar out of these unallocated expenditures to that intangible property, known as a franchise. You have put it all at the bottom of the pool, and on the concrete dam and the power house and the machinery and the transmission lines. Isn't that right?

A. We have allocated the expenditures——

Q. Entirely to that?

A. No, we have allocated them, and estimated the interest during construction in proportion to these costs as given.

Q. To this physical property?

A. Yes.

Q. Tangible property?

A. Yes. We have no other figures.

Q. Dr. Gregory, you are familiar with the pre-license cost—you know what I mean—it has been referred to here, [fol. 268] which includes the cost of lands not flooded and the cost of lands in Pennsylvania.

(Mr. Robinson:) What was that question, Mr. Stenographer?

(Mr. Howard:) You know what item I mean?

(Mr. Robinson:) What was the question, Mr. Stenographer?

(The Witness:) Yes, we have taken into consideration what is here, and that is all.

(Mr. Robinson:) Just a moment. Let the stenographer read the question.

(Thereupon, the stenographer read the record as requested.)

(The Witness:) My understanding is that figure does not include cost of lands in Pennsylvania.

(Mr. Robinson:) Your witness testified as to that.

(Mr. Howard:) I asked him whether he knew that fact.

(The Witness:) I did not know that it was a fact.

(Mr. Archer:) The Susquehanna Power Company did not own any land in Pennsylvania.

(Mr. Robinson:) Of course, not.

(Mr. Howard:) Yes, it did.

(Mr. Archer:) The Susquehanna Power Company did not.

(Mr. Robinson:) No.

(Mr. MacNabb:) It did not own any land.

(Mr. Mason:) May I make this statement, and if you want to do so, Mr. Roux can be called back and confirm [fol. 269] it under oath, and it will be shown and confirmed that the $5,800,000, as pre-license cost, includng the cost up to the date of the license of all of the investment in lands for the waterpower site, and that included the part of the lands not flooded, and lands in Pennsylvania.

(Mr. Archer:) Is Mr. Mason testifying?

(Mr. Mason:) That included the costs of lands, cost of stock of underlying companies, included the costs of many things not land, but are reflected in the acquisition of the costs of lands in Maryland and in Pennsylvania.

(Mr. Archer:) Is that the land that Mr. Kellogg referred to as being worth twenty million dollars?

(Mr. Robinson:) Twenty-one million dollars.

(Mr. Mason:) That is the power site that Mr. Kellogg referred to, and that is the power site that is included, and includes the entire acreage now running back for fourteen miles from the dam site into Pennsylvania, and the entire acreage for the power site, which is the area that he had reference to when he referred to that in his testimony that you have referred to to-day, and which is included in the so-called pre-license cost item.

(Mr. Archer:) Yes. That, then, is what he said was then worth twenty-one million dollars, and that is a part of what you say you only paid five million and something for?

(Mr. Williams:) Has he said that?

(Mr. Robinson:) Yes.

(Mr. Archer:) Yes, he said that that was included in the five million dollars.

(Mr. Robinson:) In the five million dollars, and is what they say is worth $21,000,000.

(Mr. Archer:) That is what I want to get straight.

By Mr. Howard:

[fol. 270] Q. Dr. Gregory, let me ask you another question, as to your theory as to this. I just want to make it clear as to this. This is a very large item, the item for moving the tracks of the railroad company. Where did you allocate that, or where did you put that?

A. In the figures furnished to the Tax Commission that is included under land, under the main heading that we have called land and water rights. It is under the heading that say that this item covers the cost of land and rights acquired subsequent to the issuance of the federal license for the dam, reservoir, railroad relocation, roads, etc., together with the cost of surveying, searching titles, legal expenses, to clear titles, fees, expenses of land agents, recording stamps, etc.; cost of clearing land, cost of relocating the Columbia and the Port Deposit Railroad in Maryland; cost of relocating roads, telephone and telegraph lines, and so forth. And that is reflected in the element of the submerged portion of the land in the reservoir. The relocation of the railroad is a direct construction expense necessary to the reservoir and for the pool.

Q. How did you divide between Cecil and Harford County?

A. It is proportioned as shown in here, by the proportions given under the head of land and water rights in the sixth column.

Q. As a matter of fact, that railroad was located in Cecil County altogether, wasn't it?

A. Yes.

Q. That work was all done in Cecil County, wasn't it?

A. Yes.

Q. Let me ask you this question, suggested by Mr. Mason: You have given your credit for the building of state roads, haven't you?

A. Yes.

Q. That is based simply on the acreage basis that you say that the County Commissioners assessed the land at, isn't that right?

A. Yes.

Q. Now, how are all of the items of cost that went into the laying out of those roads, how are they allocated in your calculation, and the cost of the building of those roads?

[fol. 271] (Mr. Robinson:) Just simply the necessary cost to build new roads to take the place of the old roads which were flooded.

(The Witness:) That is included under the heading of land in the first column. Without reading it over again, it says, cost of relocating roads.

Q. And that is reflected over in the value of and all of that goes into the bottom of the pool, doesn't it?

A. That is reflected in the land in the bottom of the pool, and it is necessary, the reconstruction of the roads, is absolutely a necessary expense in order to build a reservoir, and have a reservoir.

Q. So, the credit you allow the company is simply for this acreage value of the land occupied by those roads according to the acreage value that the County Commissioners adopted apart from your advice, is that right?

A. That is all.

(Mr. Robinson:) And the construction by the company there, too.

By Mr. Howard:

Q. While, on the other hand, the entire expense of construction of those roads is the expense of relocating them and laying them out, that expense you have allocated practically against submerged land, as an item going to make up the value of the submerged land. Is that right?

A. Yes.

(Mr. Robinson:) I suggest, Mr. Howard, that locating and constructing those roads was made necessary by a specific contract which the company assumed.

(Mr. Howard:) All right, that has been stated here before.

(Mr. Robinson:) I say, that there was a specific contract between the State, entered into between the company and

the State, and the Public Service Commission, and the Roads Commission and the Board of Public Works, by which they were allowed to flood certain roads if they reconstructed certain roads at their own expense.

[fol. 272] (Mr. Archer:) So that does not enter into this proposition at all, as to that value, or that allocation.

By Mr. Howard:

Q. Just one more question: Dr. Gregory, are you aware of the fact that there is a natural tail race at this point below this dam that required little or no alterations, and not the high amount shown by these papers, so that the expenditure for the existing tail race there was because the federal government required it in order that there might be a way open for navigation?

A. No.

Q. You were not aware of that fact?

A. No.

Q. Were you aware of that fact when you said that the construction of a tail race was necessarily a part of the building of any dam?

A. No; but those are expenditures that always come in—not necessarily a tail race, but expenditures that either a utility company, or a city, are obliged to do, and have to do in order to be able to build a project. I will illustrate that by saying that in the construction of the reservoir for the City of Columbus, in order to build it, we had to flood state property. They flooded their power house and laundry and their sewage disposal works, and it cost the City of Columbus $250,000—a quarter of a million dollars—to replace those works, so that they could build their reservoir.

Q. So that, in other words, what I have stated is a fact, and if you had known it, it would not have modified in any way the opinion you have expressed, that this all goes into the classification and cost of this real estate?

A. Value of this real estate. It does.

(Mr. Howard:) That is all.

(The Chairman:) Do you have any more witnesses?

(Mr. Robinson:) Yes.

(The Chairman:) How many more witnesses do you have?

(Mr. Archer:) We have only one more witness, I think, and then we will want to have some more of the records [fol. 273] from the Public Service Commission, which we would like to get before the court.

(Mr. Robinson:) This witness will be a rather long witness, your Honor.

(Mr. Archer:) He will probably be as long as Prof. Gregory.

(The Chairman:) Would you be able to finish today?

(Mr. Robinson:) No, sir.

(The Chairman:) I think in that case, we might as well try it Monday. You can't get through with it anyway today. I would like to have finished today. If we can't get through today, would we be able to finish Monday?

(Mr. Archer:) I am perfectly willing to go on now.

(The Chairman:) Would we be able to get through today by finishing late?

(Mr. Archer:) I am willing to go ahead.

(Mr. Howard:) I had arranged to go out of town on Tuesday. I would like, if possible, not to run over that long.

(The Chairman:) As I say, the Commission has another docket for Tuesday. This does not enter into the calculation of that at all. We would like to dispose of it before then if possible.

(Mr. Robinson:) What about Monday?

(Mr. Howard:) I am afraid that we would not finish Monday. How long will your other witness take?

(Mr. Archer:) We have another witness. He certainly will not be any longer than Dr. Gregory.

(The Chairman:) Will he be as long as he was?

(Mr. Archer:) In addition to that, I have a number of [fol. 274] extracts from the testimony before the Public Service Commission, which we have had typewritten, with reference to the page numbers, that we should like to put into the record. Now, if they will let those excerpts go into the record, the same as was done with this other matter, we could put that into the record, and we want to offer that.

(Mr. Howard:) I do not think that you can pick out excerpts from testimony given somewhere else and put them in the record here. I do not think that that is admissible.

(Mr. Archer:) Then, we can put the whole record in.

(Mr. Howard:) I do not think that the whole record is admissible, unless it is from some finding, or some decision, or has some relevancy, because certainly what witnesses testified to three years ago is not admissible here today. If you want that, you should have these witnesses here.

(Mr. Archer:) If your Honor please, our idea is this, that these proceedings were had before the Public Service Commission where they were asking for a franchise to do certain things, and in order to get that franchise, and to do this construction, they were to be allowed a certain percentage or return, and in order to get that they had to have certain testimony, and had to have evidence as to value, which was produced before those three commissions, the Federal Water Power Commission, the Public Service Commission of Maryland, and the Public Service Commission of Pennsylvania. And, the witnesses that we cannot get, they are officers of the company, the very same officers of the Philadelphia Electric Company, and the Susquehanna Power Company. They are their witnesses. We want to offer what they said, want to offer their testimony as to the value of this property, and that is a public record.

(Mr. Howard:) That is not testimony as to the value of these items of this property now.

(Mr. Archer:) Yes, as to these very items, the value of this very property that we are trying to ascertain here.

[fol. 275] (Mr. Howard:) This was years ago.

(Mr. Archer:) It was in 1925 and 1926.

(Mr. Howard:) Yes.

(Mr. Archer:) And they estimated it so accurately that so far as the cost of construction of the dam was concerned, they were within a few dollars of it.

(Mr. Robinson:) I should not think that you would object to having the value shown, Mr. Howard.

(Mr. Howard:) That testimony is not relevant as to this thing. If the gentleman will state what it is, possibly if it has any relevancy we may go over it, but it is certainly not competent to prove value of those structures now at the present day, and furthermore, we cannot bring in here excerpts from testimony given in that way.

(Mr. Archer:) The we will offer the whole record.

(Mr. Howard:) No, you cannot offer the whole record in that way to prove value now. That was testimony that was

given three or four years ago, and I do not think that it is competent to bring in statements of witnesses here, which was nothing more than a prediction of what they expected to develop.

(Mr. Robinson:) It corresponds with all of their sworn statements as to what the cost was?

(Mr. Archer:) We can show their figures and show that they are absolutely identical, their estimated figures and the figures that they are now using as to the costs. Now, as to those figures and as to the costs, they were absolutely accurate as to within a few dollars.

Here there are fifty million dollars or more involved, and I should think that their testimony as to the value of this land here in Maryland would be just as accurate—and when they are getting up here and trying to repudiate the officials of their own company as Mr. Long, for instance, it certainly seems to me that when they come before this Commission in that manner they are coming in very bad grace, [fol. 276] and that is the class of testimony that we wish to offer.

And also Mr. Mason's stateemnt. Mr. Mason was a witness, and we want to offer his statement. If he wants to get up and repudiate it here he can do so.

(Mr. Howard:) There are no statements as to the value of any of this property that would have any relevancy.

(Mr. Archer:) As to value?

(Mr. Robinson:) It shows value.

(Mr. Howard:) As to the value of these items of property involved here? That is what they were then estimated.

(Mr. Robinson:) We can put a witness on and maybe there will be an objection.

(Commissioner Weant:) If the Commission has to, we will rule on it.

(Mr. Robinson:) That question can come up at that time.

(The Chairman:) We can go on again after recess after lunch if we can finish on Monday.

(Mr. Howard:) I would like very much to finish on Monday, if possible.

(The Chairman:) All right, we will adjourn until 2:30, then.

(Thereupon, at 1:20 o'clock p. m., a recess was taken until 2:30 o'clock p. m. of the same day.)

After Recess

Thereupon, WESTON E. FULLER, a witness of lawful age, produced on behalf of the County Commissioners, having been first duly sworn, testified as follows:

[fol. 277] (Mr. Howard:) General Robinson, I want to make a suggestion that may expedite matters. This is the other expert, is it not?

(Mr. Archer:) Yes, sir.

(Mr. Howard:) We are perfectly prepared to admit that he cooperated in preparing this statement and that in all respects he would testify the same that the other witness did.

(Mr. Robinson:) And that he is qualified in every respect.

(Mr. Howard:) And that he is qualified. I do not see any use in going over the same field.

(Mr. Robinson:) We are not.

(Mr. Archer:) We are going over something new.

(Mr. Robinson:) We are not going to talk about automobiles this time.

(The Chairman:) I hope in the limited time the Commission has that you gentlemen will cooperate to save all the time possible.

(Mr. Robinson:) We certainly want to do so.

Direct examination.

By Mr. Archer:

Q. What is your full name.

A. Weston E. Fuller.

Q. Where do you live?

A. Swarthmore, Pennsylvania.

Q. What is your profession?

A. Consulting civil engineer.

Q. What do you specialize in?

A. In hydraulic work, hydraulic engineering.

[fol. 278] Q. How long have you been an engineer?

A. I graduated from Cornell University in Engineering in 1900; twenty-nine years.

Q. And during that time have you had any experience in the valuation of hydro-electric propositions?

A. Yes, I have valued a number of hydro-electric and water-power plants in different parts of the country.

Q. Have you been engaged in that line of business recently?

A. Yes. At the present time I am engaged in another power project, the valuation of it for the city of New York. There are five water-power plants at Schoharie Creek, and I am at present engaged in the valuation of those. Also, I was engaged a short time ago in a case recently completed of the Cahoes Light & Power Company, with regard to the effect of a diversion of Schoharie Creek for the city of New York. Also, I have valued some ten other water-power projects for the city of New York; also water powers for the city of Providence and various others.

Q. Were you employed by the County Commissioners of Harford County to assist in the valuation of the property of The Susquehanna Power Company, and if so, when?

A. Yes, sir; I was. I think it was in September of last year.

Q. And have you been engaged in that work since that time?

A. Yes, I have worked on it more or less since that time.

Q. When you were first employed, what did you do in order to familiarize yourself with this project?

A. I first got the records of the stream-flow of the Susquehanna River. I also examined the testimony in the case as submitted by the various companies, the Susquehanna Power Company and others, before the Public Service Commission. I also studied the equipment which was to be installed in the plant; and in that way I had information as to the amount of power and the nature of that power, which would be generated in the Conowingo plant as to its value to supplement a steam plant in Philadelphia or elsewhere. I further examined all costs data as submitted by the Company to the State Tax Board and to the Counties of Har- [fol. 279] ford and Cecil, and then in conjunction with Dr. Gregory I subdivided these costs among the various items involved in the plant to the best of our ability.

Q. At the time you prepared that blueprint showing that subdivision of the cost, what figure did you have from the Company showing the amount of expenditures?

A. The total figure given by the Company was $36,466,-483.08, but it was stated that that did not include the in-

terest on the structures during the progress of the construction.

Q. How much did you add for that?

A. We added $2,181,619 as an estimate of the interest which had accrued during the period of construction.

Q. Mr. Fuller, you were at the hearing yesterday and heard Mr. Roux's testimony that at the time of the assessment of this property the total amount of expenditures was $45,511,000?

A. Yes, sir.

Q. Would that difference of expenditures affect your calculation? If so, to what degree would it have affected it, to a greater or smaller degree?

A. It would have made it somewhat greater.

Q. Mr. Howard has said it is not necessary for you to go into detail about this blueprint. Is your testimony the same as that of Dr. Gregory as to the detail?

A. As far as subdividing the property, because it was done jointly and after conference between us.

By Mr. Howard:

Q. You mean you do agree with it?

A. I do without taking up the specific items.

By Mr. Archer:

Q. Did you also consider the deductions which they agreed to make as to the bridge and as to the land in the roadbed on which state roads were constructed?

A. It seems to me the value of this property is as great as its cost, including the cost of the road and of the dam, as far as that is concerned.

Q. In estimating the value of a property of this kind, [fol. 280] how do you figure on it, how do you arrive at it?

A. Under ordinary circumstances, if there are applied no restrictions on the amount of revenue which could be derived, the value of a hydro-electric property is the cost based upon what it will earn. It seemed obvious to me that the value of the property was in excess of its cost. The Pennsylvania Commission, the Maryland Commission and the Federal Power Commission had limited the allowable

earnings on this property to seven per cent. net return after paying operating expenses, depreciation, taxes, maintenance. It seemed to me on that limitation its value, so far as the property owned by the Susquehanna Power Company is concerned, was practically the same as its cost. For that reason we subdivided the cost as best we could so as to separate it between the counties and include personal and real estate.

Q. In estimating the value of a plant of this kind, does the horsepower generated enter into it, and if so, how?

A. Yes, the amount of power is an element to be considered, and also distribution of the power, that is the time of the year, the time of day, and flexibility with which that power can be generated and distributed are all elements. Of course another element is its availability to a market and its location.

Q. Well, by deducting that value, what is the minimum value that you would put on horsepower as a unit of valuations?

(Mr. Howard:) You mean for this property?

(Mr. Archer:) Yes; for this particular property.

A. This particular property, as I say, I think, is limited by the fact that its earnings are limited to seven per cent. The cost of this property is approximately $120 per horsepower, which is a low figure for waterpower in this vicinity.

Q. It has been testified that this dam at the present time develops 385,000 horsepower—I think I am correct; am I?

A. I think that is approximately correct.

Q. If it were not for this limitation of seven per cent. [fol. 281] return, what would you think would be a fair valuation per horsepower?

A. I should say the power would be worth at least $150 per horsepower.

Q. If you added the four units which Mr. Roux testified had not yet been constructed—is not that right?

A. Not yet. The foundations have been constructed.

Q. The 385,000 horsepower is obtained from the units they have now in operation?

A. Those that are now installed, yes.

Q. And if the other four units are installed it would increase the value of the property on that basis.

A. Yes, sir.

Q. When you spoke of looking at the records, you were referring to the records that were sent to Philadelphia of the Public Service Commissions of Maryland and Pennsylvania and the Federal Water Power Board, in connection with the granting of a license?

A. Yes, sir, those were the records I was referring to, and the testimony in those cases.

Q. You made a study of that even before you started to prepare the set of figures that you are now presenting to the Commission?

A. Yes, sir, I made a preliminary study of that before we started on this even, and I have studied further since that time.

Q. Mr. Fuller, on the basis of $120 per horsepower, what would that make the valuation?

(Mr. Howard:) I think he testified the $120 horsepower was obtained by dividing the cost by the number of horsepower; is not that right?

A. That is approximately.

(Mr. Howard:) He will simply work back to the thing he started with.

(Mr. Archer:) All right, I will withdraw that question.

[fol. 282] Q. Then at $150 a horsepower, what would it make the value of it?

(Mr. Howard:) He has stated it is not worth that.

(Mr. Archer:) He said it would be as a hydro-electric plant if it was not for this question of percentage, and you said this morning that should not enter into the valuation, so I want to figure it your way.

(Mr. Howard:) I do not recall any such statement.

(Mr. Archer:) Some one made that statement from your side to the Commission.

A. That would be worth $57,000,000 approximately.

Q. You are referring to the Susquehanna Power Company in Maryland, with that figure?

A. Yes, I am referring in that $150 to the property of the Susquehanna Power Company including a portion of the land involved in the State of Pennsylvania.

By Mr. Howard:

Q. The whole project?

A. No; the whole waterpower project, but not including the transmission lines.

By Mr. Archer:

Q. Mr. Fuller, were you present when Mr. Roux testified yesterday?

A. Yes, sir.

Q. Did you see a copy of the statement he presented and which was offered in evidence?

A. I did.

Q. Showing certain items which were classed as intangible?

A. I did, yes, sir.

Q. I do not want you to take up item by item as Dr. Gregory did, but will you give us in a general way your opinion of those items as to whether or not they are tangible or intangible, with reasons for your statement?

A. I consider practically all those items to be tangible items; that is, I consider them to be expenses which are necessarily incurred in the construction of a plant of that nature, and any of those items cannot be allocated exactly [fol. 283] to a particular structure. Take, for instance, engineering; engineering is done for the entire project. Just how much is done on this structure, just how much is done on that structure, is very, very difficult to ascertain, and the usual practice in distributing engineering costs is to distribute it as a percentage over the different structures. The same is true of legal expenses. The general expenses of the company during construction, and interest during construction, are not readily allocated to the exact structures, but they are necessary expenses, just as necessary as any other type of labor or material, and go into the actual cost of the structures and into their value. The great majority of those items classified by Mr. Roux as

intangible are of that nature. The organization expenses may be somewhat different. I have not given any very serious thought to that, because the organization expense here was only $4.50 and does not amount to anything. If the organization expense was for an organization necessary to perfect the construction force, to build the plant, it should be charged in as a tangible item. If it was the organization of the company in some other way then it might be taken as an intangible. But intangibles usually exclude general organization expenses for the company. And so with the going value, a going concern value, which is a part of the business of the company, as distinguished from its physical property, it is intangible. But where the items can be definitely allocated to the structures and are part of the cost of the construction, they are tangible.

Q. Then anything that is part of the construction cost is, in your opinion, tangible?

A. As far as construction costs, yes, sir. I may add to the question about those items allocated by Mr. Roux as being intangible, some of those items such as the relocation of the railroad, and the telephone lines, and so forth, are to my mind absolutely necessary expenditures in order to make that land available for its purpose and do add to the value of the land for the particular purpose to which it can be applied, and in that way we have assigned it to the land.

Q. In other words, you think it increases the value of the land in the bottom of the pool?

A. It increases the value of that land, because it takes away the structure which would prevent the utilization of [fol. 284] the land for that purpose. It is absolutely necessary to do that before the land can be used for its best purpose.

Q. You stated in the beginning that you thought the cost price was a fair valuation of the property. What did you consider as the cost price?

A. At that time I took the actual cost of these structures as given by the company and added to it the item which they admitted was not included, the interest during construction, which in my opinion was money spent in building this property.

Q. Then, of course, that included the machinery in the power house, which is classed under the Maryland law for these properties as personal?

A. The total cost included that.

Q. Then Mr. Roux testified that at the time of the assessment the total amount of expenditure was $45,511,000. Would you consider that the fair value of the property then, at the time the assessment was made?

A. Yes, sir.

Q. That is in Maryland. Now, the report of the Susquehanna Power Company filed with the Public Service Commission of Maryland as of the last of December, 1928, shows the amount of expenditure as $45,797,111.42. Would you say that would reflect the fair market value of the property as of that date?

A. I do.

Q. For the reasons you have stated?

A. Yes.

Q. If it were not for this seven per cent. limit on the return, would it be greater or less?

A. It would be greater.

Q. Greater, you say?

A. Yes, it would be greater.

Q. You think, then, the seven per cent. limit is also a limit on the value of the property?

A. I have so interpreted it because while seven per cent. is a very good return; I think that is a fair amount to use because it is a very common percentage to allow a public utility company.

Q. Is that a proper method of estimating it, taking the income allowed as in this case under the agreements which [fol. 285] you state you have looked into between these several companies and the State of Pennsylvania and the Federal Waterpower Commission?

A. Taking into consideration the fact that if it was not for the limitation put on by the Public Service Commission there would be a greater income, I think this clearly represents the minimum value.

(Mr. Archer:) The witness is with you.

Cross-examination.

By Mr. Howard:

Q. Mr. Fuller, the values you are speaking of are those of the entire project as a whole, are they not?

A. The $45,511,000, as I understand it, is the value of a project involved in the Power Plant on the Susquehanna River, and includes in that case the transmission lines, the Maryland lines.

Q. Your valuation is of everything that the company has and used in any way for that purpose?

A. Its physical property.

Q. But as a whole?

A. Its physical property.

Q. Do you mean to say if it did not have the right to use the waters of the river, or any franchise, it would not have any such value?

A. It would not, if it did not have the franchise.

Q. And you have not counted the franchise except in so far as may have been costs in acquiring it?

A. I considered it would not have those rights without the franchise and therefore they were fair costs of the project.

Q. This is not a case before the Public Service Commission that we are speaking of, but we are speaking of the assets of this company, and I am calling your attention, as I called Prof. Gregory's attention, to the fact that you attribute the entire value of the entire going concern to its physical, real property and machinery?

A. It seems to me it necessarily follows from the fact that the entire value on which they can earn is the legitimate investment in the physical property of this plant.

[fol. 286] Q. Then does not your argument lead to this: You say that on the one hand you are prepared to testify that the development as a whole is worth what it cost, and on the other hand you are not prepared to say it is worth any more; that is right, is it not?

A. I mean under the limitation, that is true.

Q. You go further and say whatever it cost it would be worth that?

A. Under the limitation, yes.

Q. So if it had cost fifty per cent. more, it would be worth fifty per cent. more?

A. No, sir; I have not said that. I have said that irrespective of this limitation the plant was worth, in my judgment about $57,000,000. If the cost had been in excess of $57,000,000, I should not have said necessarily it was worth that.

Q. We are dealing with things as they are, and I understand you to say in your best judgment it is worth just what it cost?

A. Under the limitation; yes, sir.

Q. Let me put this: Suppose that railroad it had to move, and which cost several million dollars to move, had not been there, the employment of the scheme would have cost them much less, would it not?

A. Presumably; yes, sir.

Q. And according to your present testimony it would now be worth that much less?

A. Under the condition laid down by the Public Service Commissions; yes, sir.

Q. So the real reason why you think the moving of that railroad raised the value of the entire outfit three or four million dollars is because it enabled the company to get a return on it much more under the limitation imposed by the Public Service Commission?

A. That is the effect of it. As I have already said, the value of this property, irrespective of the limitation, would exceed that.

Q. You say the value of it irrespective of that? Is it not a fact it is a property that could only be fully utilized in conjunction with some large steam plant and use of it, such as is made in Philadelphia?

A. Unquestionably, a water-power plant of this kind [fol. 287] must be used in conjunction with some large steam plant. That follows with all water-power properties of this nature. There are very few exceptions to that. The only ones are Niagara Falls and possible developments on the St. Lawrence River.

Q. Without the use of the current that can be made in Philadelphia by the Philadelphia Electric Company, if this plant had been built by somebody else, you are not prepared to say it would be worth the figures you are naming?

A. I am not willing to limit it strictly to the Philadelphia market. That is the nearest and best market. Unquestionably, steam plants are necessary to equalize the power. That is inherited by this kind of water powers. It is not peculiar to Conowingo, but to all.

Q. You do not mean, do you, that without the assurance of the Philadelphia end, it would have paid anybody to develop this water power and to build an auxiliary steam plant of equal size to run with it?

A. Of course, it would not have paid anybody if it did not have a market equal or superior to the Philadelphia market.

Q. Is there any one market at present that could consume it?

A. There are other people that use electricity. They are a little farther away from Philadelphia. The Public Service of New Jersey has a large station.

Q. Of course, your experience in valuing power plants and your testimony in this case is directed to their valuation as a whole, as an existing, going concern, is not that right?

A. No, I would not say I was applying it necessarily as a going concern. I am valuing the physical property.

Q. As an entirety?

A. As an entirety, and then allocating it to the several items as best I can.

Q. So far as your valuation of it as an entirety is concerned, you have made no independent check whatever, I take it, of any of these figures as to the cost of the dam or cost of other items, or made any attempt on your part to independently value those. Your contention really amounts to this, that here are cost figures, and you say that in your judgment under the conditions it is worth what [fol. 288] it cost?

A. I have not set my judgment as to reproduction up against the actual cost of a plant, which was built in this connection at such a recent date.

Q. You have made no effort to do it?

A. These are practically present costs. Conditions have not changed materially, and I think there is no better evidence than actual cost unless there is some indication that those actual costs are in some way influenced by outside in-

terests, and I have no reason to think that. I do not know that many of these structures are very fair prices.

Q. In other words, all of your testimony and all of your figures are based on the supposition that you have been furnished with actual cost figures, and on your further judgment that the property is or ought to be as a whole worth what it cost. Am I not right?

A. May I have that read to me?

(The question was repeated by the reporter.)

A. I have assumed that the costs given us by the company are correct. In my judgment, the property is worth at least the amount it cost. I do know that some of these costs in here, as I have said before, are very fair prices. The cost of water and land, the cost of generators, is reasonable. And I have no reason to think that there is any work done on that project which was not well done and done economically. The figures indicate it.

(Mr. Howard:) That is all.

By Commissioner Weant:

Q. What portion of the $2,181,000, according to the way you have worked this out, would you apply to the tangible and how much to the intangible?

A. I consider that is all tangible. That is the interest on the money. That is spent during the time of construction, when there is no possibility of return to the investment. It is part of the cost just as much as payments for labor and material.

Q. You put it to the land?

A. We distributed it generally over the different structures because the money was spent on the different struc-
[fol. 289] tures, and in about that percentage it would go to those structures. That is our usual way of valuing all property, to include interest during construction, because you cannot earn anything on the money and it is tied up.

Q. What portion of it did you apply to Cecil County?

A. As I recollect it, our allocation was forty-three to Cecil and fifty-seven to Harford. That would be as near as I could approximate it.

By Mr. Howard:

Q. You and Professor Gregory, in your allocation of these different items allot nothing to intangibles is that right; put it all on tangible property?

A. I found no intangibles in these items, with the exception of that $4.50 for organization expense, which I will be glad to take out.

(Mr. Howard:) We will accept the $4.50. That is all.

(Examination of witness concluded.)

(Mr. Robinson:) We now desire to offer copy of the proceedings before the Public Service Commission of Pennsylvania, and of Maryland, too, for the purpose of showing the exact agreements between The Susquehanna Power Company and the Philadelphia Electric Company and the kindred companies. They are all set forth in this printed copy.

(Mr. Howard:) You mean there are copies of it all there?

(Mr. Robinson:) Yes, they are supposed to be exact copies. The first contract is called the master contract, pool agreement; the second, lease of the Maryland properties, lease of the Pennsylvania transmission lines, in which we are not interested; operating agreement No. 5, guarantee agreement, securities agreement A, and security agreement B, which are all printed, and it is agreed that they are copies of the originals, and it is agreed that they shall be used.

(Mr. Howard:) I object only in the contingency that you are going to read them.

[fol. 290] (Mr. Robinson:) I shall not do that. There was a supplemental petition which made some unimportant corrections of the master contract, I do not think they are material at all; that was filed with the Commission and I would like to file now these three pamphlets with this Commission—that is with reference to the power agreement.

(The pamphlets referred to were marked respectively County Commissioners' Exhibits Nos. 1, 2 and 3.)

(Mr. Archer:) There are two items in the report of the Susquehanna Power Company to the Public Service Commission, filed the 31st of December. As these have to go back, I would like to read these two items.

It shows the total fixed capital at the beginning of the year 1928 as $36,466,583.08. The total fixed capital on the 31st of December, 1928, is $45,797,111.42.

Just one other word on this testimony before the Public Service Commission. Our understanding of this case was that the Susquehanna Power Company was coming in here objecting to an assessment. There is no question that there are only a few propositions like this in the United States, or even in the world, and only experts are prepared to testify to the values. In testifying before the Public Service Commissions of the two states and the Federal Water Power Board, in order to fix the return at seven per cent., or a guaranteed seven per cent. on the investments, the Susquehanna Power Company and the Philadelphia Electric Company, offered a great many expert witnesses who are not available to us. All of them were in their employ then and a number of them are still there, officials in their company, and certainly available to them.

We have made a study of this testimony and we have taken from it abstracts with a reference to the page where the abstract can be found in the copy of the testimony which is on file with the Public Service Commission of Maryland. Now we offer these. You may say they are just notes, but we think it important, and we show a reference to the page of the testimony from which it is taken, and whose testimony it is we are quoting. This testimony, as I say, is on file in the Public Service Commission. We did not attempt to have a copy made of it all, as there are some 2,000 pages of it.

[fol. 291] (The Chairman:) When was this testimony taken?

(Mr. Archer:) At the time of the signing of these contracts, and the time when the question was up of the cost of these propositions.

(The Chairman:) Prior to the building.

(Mr. Archer:) Yes. For instance, to give you an idea of it, there is testimony in there by officials of the Susquehanna Power Company and Philadelphia Electric Company that 88 per cent. of the property, in value, is in Maryland. There are estimates from engineers who say they have estimated dozens of these propositions and that they can estimate down to the fraction of a per cent. what it is going to cost. One witness made the statement that in estimating—

I don't know how many, some forty-six plants involving millions of dollars, he had never been out more than a fraction of a per cent. We think the set-up of those figures is of importance and is proper evidence.

(Mr. Howard:) This is all an abstract of testimony that was taken four years or more ago when this thing was being begun. What possible interest has this Commission in the opinion of experts taken four years ago as to what a thing was going to cost, which has now been finished and as to which you know what it has cost. Furthermore, they are not our statements. Even the testimony of the witnesses who are in our employ, given on the stand, is not in a sense our statement. They are testifying to the best of their knowledge and belief. They were testifying then to the question, Is this project worth undertaking? They predicted, and predicted truly—we are not claiming that the project is a failure; they predicted that it was worth undertaking, and they gave their opinion of what the probable cost would be. Now, when you are dealing with the present time, when you are dealing with the question of assessing, not the property in 1925 that was subject to assessment in Harford County—that was significant—but dealing with the assessment that is before this Board today. Of what possible interest or what possible use can these predictions of people as to what it would cost to do it, made before it [fol. 292] was done, be to the Board? I have not myself seen the abstract, but Mr. Mason tells me that it does not present a fair picture of the testimony, that by picking out pieces here and there it does not give any fair impression of the testimony.

(Mr. Archer:) May I say one other word, to give you an idea of what I am getting at. When they were asking to have this large value fixed for the purpose of fixing the income, the Philadelphia Rapid Transit was objecting to the amounts, except they were on the other side then from Mr. Roux. They said——

(Mr. Howard:) They said it was not worth a hundred thousand.

(Mr. Archer:) They said they were intangibles and should not be considered, as they say now, and these men went on the stand, and we will show by this testimony——

(Mr. Mason:) May I interrupt you, because I am afraid you have a wrong impression of what the whole story there

was. We were trying to get a demonstration that the project could be built for a certain sum of money, and that when built it would produce a certain amount of energy. There was a difference of opinion as to what the cost of the project would be, and if it were to cost so many millions more than the energy could not be sold at a fair price because it would only produce a certain amount of energy, no matter what the price would be. And the demonstration there was what would be the cost of producing the thing that would generate a certain number of kilowatt hours of energy. It was not a rate question, it was not a valuation question. It was simply and solely a difference of opinion of experts as to whether or not it would cost this many millions or that many millions, because it was substantially agreed that a minimum of energy could be produced, and that was the question there.

(Mr. Robinson:) Was that an ex parte proceeding?

(Mr. Mason:) No, a heated contested proceeding for eighteen months.

[fol. 293] (Mr. Robinson:) Who was that contest by?

(Mr. Mason:) By the Rapid Transit Company and by several other gentlemen in the background, some of whom you know in the State of Maryland.

(Mr. Archer:) Did not the Philadelphia Rapid Transit raise the point that some of the things for which you were charging, purchase of old charters, pre-license costs—that that was not tangible property and should not be considered in fixing the interest rate, and did not your people in reply to that—I think Mr. Long or Mr. Kellogg—testify that those were all necessary, and that the proposition completed would be of a greater value than your outlay including them. I think the references we give you there will bear that out.

(Mr. MacNabb:) Mr. Mason has suggested this was for the purpose of fixing a valuation as of that date.

(Mr. Mason:) No valuation at all.

(Mr. MacNabb:) I understood you to say that.

(Mr. Mason:) I said it was an estimate of the cost of the project when complete, in anticipation of three years' work on the project.

(Mr. MacNabb:) That surely is a valuation of what they expected to do, I do not see anything else to it. It is perfectly proper for this Commission to have before it that

work to compare with their present figures, and any testimony that is taken before the Public Service Commission is available to the State Tax Commission, and the State Tax Commission has a right to consider it. That has been decided by our courts, and we are only asking that the State Tax Commission be allowed to consider what was before the Public Service Commission.

(Commissioner Leser:) I would like to ask Mr. Howard why do we have all this commotion about the value of this property when he says it is not taxable at all.

(Mr. Howard:) That will come later, Judge.

[fol. 294] (Laughter.)

(Mr. Robinson:) The only thing is they have come in here objecting to the assessment, as to the amount of it, and have not shown any testimony as to the value of the property. The only testimony which has been produced has been that produced on the part of Harford County, and it seems to me that the record of the proceedings in this matter before the Public Service Commission should be before you to be considered. And if they do not like the notes that were taken from it, we will put it all in.

(Mr. Howard:) I do not care if the Commission reads this whole testimony, but we are making a record here—we may have to take an appeal, or go to the Court, and I do not want to cumber the record with all that. We do not think those abstracts are fair statements, and I object to putting it in in that manner.

(Mr. Robinson:) Then I think it is only fair to put all the testimony in.

(Mr. Howard:) Then I think you are cumbering the record to a needless extent. This is something that happened four years ago, before any work was done. It consisted merely of estimates and predictions as to what it could be built for.

(Mr. Robinson:) More than that, you had quite a lot of property there at that time.

(The Chairman:) The objection is sustained.

(Mr. Robinson:) You mean you object to us putting in the record that is brought here from the Public Service Commission?

(The Chairman:) We do not think it is relevant, it was before it was built, and we now have the cost since it was built. We do not think it would help us any.

(Mr. Robinson:) I do not know whether—if we have not, we want to put it in—I do not know whether we have put this exhibit, this print which was used by Dr. Gregory in evidence or not.

[fols. 295 & 296] (The Chairman:) I understood it had been put in.

(Paper marked "County Exhibit No. 3.")

(Mr. Howard:) I assumed so. Mr. Gregory kept the big blueprint.

(Mr. Robinson:) That was the original of this. You verified it well enough to know that this is a copy.

(Mr. Howard:) We will take it on faith.

(Mr. Robinson:) I think the figures are exact.

(Mr. Howard:) It is a photographic copy, isn't it?

(Mr. Robinson:) Yes, it is a small picture of the big blueprint.

I believe we will close, gentlemen.

(Evidence concluded.)

(Thereupon, at 3:40 o'clock p. m., the hearing in this case adjourned to meet again Monday afternoon at two o'clock for the purpose of argument.)

[fol. 297] Thereupon W. Elijah Somerville, a witness of lawful age, produced on behalf of the Commissioners of Harford County, testified as follows:

Direct examination.

By Mr. Robinson:

Q. Do you reside in Harford County?

A. I do.

Q. And at this time you are one of the County Commissioners of Harford County?

A. Yes, for little more than a year.

Q. Prior to that, you were the County Surveyor in Harford County for a number of years?

A. Twenty years and a matter of two months.

Q. And you have had considerable experience in that work?

A. I have spent my life in it.

Q. Were you employed by The Susquehanna Power Company in any work they did on the Susquehanna River?

A. I was employed at intervals from October, 1917, up to the completion of the work.

Q. In the course of your employment, did you make a measurement and location of the line of the dam dividing Harford from Cecil County, and the length of the dam in each county?

A. In January, 1928, while there was no water below, we located the boundary line between Harford and Cecil Counties, according to the Acts of Assembly of 1829.

Q. Will you be good enough to state the length of that dam in Harford County and in Cecil County?

A. Mr. Harlow and I set brass bolts in the north and south parapets of the bridge.

Q. That is to mark the line?

A. Yes.

Q. That mark is there now?

A. Yes. Measuring along the south parapet of the bridge in a westerly direction toward the Harford shore, the distance is 838.7, to the east end of the power house.

[fol. 298] Q. What is the entire length of the dam in Harford County?

A. The entire length is very close to 5,000 feet, of which 1,550 feet is to the west end, in Harford County, and 3,058 feet to the Pennsylvania Railroad in Cecil County.

Q. Now, when you got the 1,500 feet you measured from what point?

A. The 1,500 feet is measured from the dividing line to as near the west end of the Harford Shore as we could get.

(The Chairman:) I do not quite get those figures.

A. 1,550 feet from the dividing line, measured along the south parapet of the bridge to the west end of the dam at the Harford shore.

(Mr. Robinson:) That is in Harford County?

A. Yes.

(The Chairman:) 1,550 feet.

A. About. We can not determine it exactly. Then 3,058 feet to the Pennsylvania Railroad on the east shore.

(The Chairman:) That is in Cecil?

A. That is in Cecil County; yes, sir.

(Mr. Robinson:) Does that include the power house?

A. That includes the power house in it, yes.

Q. On the Harford County side?

A. Yes.

Q. Have you the dimensions of the power house?

A. Well, I can give them approximately.

Q. Will you do that?

A. Something like a little over 800 feet.

Q. 800 feet long?

A. About 800 feet long.

[fol. 299] Q. Running parallel with the dam and the bridge?

A. And on the south side of the dam.

Q. If that is shown on the plat you have, we would like to offer the plat?

A. That is shown on the plat, and the dimensions were put on there by Mr. Harlow and myself January 20, 1928, and this was issued by Stone & Webster Company here in Baltimore.

(Mr. Robinson:) Is there any objection to filing that?

(Mr. Howard:) I want to keep the volume of the record down. Do you think it is needed?

(Mr. Robinson:) We could leave it with the Commission.

(Mr. Howard:) It is a plat the witness did not make.

(The Witness:) I did not make it.

(Mr. MacNabb:) It was furnished by The Susquehanna Power Company.

(Mr. Howard:) That is all right. I do not really question the accuracy of the plat in any way.

(Mr. MacNabb:) I do not see that it will materially affect the amount of the record. Mr. Howard has given us four or five cases of prayers.

(The Witness:) I regret to part with it very much.

(Mr. Robinson:) We might consider it in for the purpose of this hearing.

(Paper marked "Harford County Exhibit No. 5.")

Q. Do you know on which side of the river the old canal that belonged to the proprietors of the Susquehanna Canal Company originally was?

A. It was on the Cecil County side. I saw some of the remains of it.

Q. Is any of that canal now used as part of the Columbia and Port Deposit Railroad?

A. A portion of it is, or, at least, it is at the old location. [fol. 300] I do not know about the new location.

—. I am talking about the old location of the railroad prior to its removal.

A. Yes, a portion of it was used by the railroad.

Cross-examination.

By Mr. Williams:

Q. What did you give as the length of the dam?

A. From the figures, close to six thousand feet. It is a physical impossibility to tell where the dam ends. I only have figures to the Pennsylvania Railroad on one side and as near as I could scale at the bank on the other.

(Mr. Robinson:) You mean the location of the old Pennsylvania Railroad?

A. No, sir; the new location.

(Mr. Howard:) You gave 1,550 feet in Harford County and 3,058 in Cecil County?

A. Yes.

Q. That would not make 6,000? That would make 4,608?

(Mr. Williams:) It is 4,526. I thought he gave a much greater length.

(Mr. MacNabb:) I suggested 4,600 feet the other day and Mr. Roux said it was wrong.

(The Witness:) There is no way of telling what you would call the end of the dam, because you have a bank there where considerable blasting was done and there was certain alterations to the ground. Nobody can tell within a hundred feet.

(Mr. Robinson:) It is about a little over 4,600 feet?

A. I would say very close to 4,600 feet; yes, sir. There is no definite point to measure to in the shore.

(Mr. Howard:) You have measured only the length of [fols. 301-350] the dam, you have not undertaken to calculate any cubic content as in one county and in the other?

A. No, sir.

Q. Merely the length?

A. That is all. All I was to do was to fix the boundary on the bridge.

Q. As to this old canal of the proprietors of the Susquehanna Canal Company, is it not a fact that from the dam up to the State line it is entirely submerged and covered by the present pool?

A. There is a little land up on the hillside yet. I know we found one of the canal stones near Conowingo. The canal proper is submerged.

Q. The canal that carried the water is submerged?

A. It is entirely submerged, yes.

(Examination of the witness concluded.)

(Evidence concluded.)

ARGUMENT OF COUNSEL

[fols. 351-356] What were the County Commissioners of Harford County called upon to do in the assessment proceedings that this is an appeal from? They were called upon to put a taxable value on certain tangible assets that we have. They were called upon to value and appraise a dam, a perfectly definite, a concrete object, and they say, without intending a pun—they were called upon to value a certain amount of land which forms the bed of our present pool, they were called upon to value a certain amount of outlying land that lies around the pool, some of which may be needed for the purposes of the pool, they were called upon to value these transmission lines—that is such part of all of this that was in Harford County—and they were called upon to value these structures, the power house that is built upon the dam, as well as the dam itself, as a structure. Now, those are tangible physical objects, all of them. In valuing them, the County Commissioners and this Board is, of course, entitled to take into consideration their utility for all kinds of purposes.

[fol. 357] (Mr. MacNabb:) Do you mean to say that the County should have taxed the whole thing as one item?

(Mr. Howard:) I most surely have said nothing like that. On the contrary, that is the very thing I am arguing

against. I am saying they ought to value that dam—assuming these exemption questions are out of the way—I am saying they ought to value that power house; I am saying they ought to value that farm land that we own that surrounds this development; I am saying that they ought to value the land that forms the bed of the pool, that they ought to value those tangibly and objectively and as property of that kind, and not undertake to arrive at their value by starting from the Public Service Commission valuation of the entire project.

[fols. 358-370] (Commissioner Leser:) Have we the right to take into consideration the earning power of this property?

(Mr. Howard:) It has been held, for tax purposes, the earning power of property may be taken into consideration. I do not think that that means that the earning power of the entire project may be taken into consideration beyond this extent; I think the Commission is entitled to assume that this property is earning its keep, so to speak; it is not unproductive. It is not claimed that this development is a failure, but I do not think you can take the earning power of the entire project and undertake to capitalize that, and in that way arrive at a valuation of these particular items, because in so doing you are doing in another way the very thing which I think these expert witnesses made their mistake in, of trying to work down from the value of the entire project, to try to derive from that the value of the constituent items.

(Commissioner Leser:) Yes, but isn't that precisely what you do when you take the earning power of a lot and building? The building doesn't earn anything by itself, the lot doesn't, the earning is in the combination. After you have capitalized that you get the value of the whole, and then you must eliminate—I do not care what the Court of Appeals said in that gas case.

[fol. 371] State of Maryland, State Tax Commission,
Union Trust Building, Baltimore

It is hereby certified, That the attached is a true copy of the report of the Susquehanna Power Company as of

January 1, 1929, filed in the Office of the State Tax Commission of Maryland on March 15, 1929.

As witness my hand and the seal of the State Tax Commission of Maryland, this 29th day of January, 1930.

Thomas A. Murray, Jr., Secretary. (Commission Seal.)

State Tax Commission of Maryland, Baltimore

Received in Office of State Tax Commission: March 15, 1929.

Date of Notification of Assessment: October 11, 1929.

Report as of January 1, 1929, of the Susquehanna Power Company, 1000 Chestnut St., Philadelphia, Pa.

1. Date of incorporation: Oct. 29, 1919. Place of incorporation: Maryland.

2. Nature of business conducted: Hydro-electric.

3. Where is the main office of such corporation in this State actually situated for the transaction of business: 15 Courtland Street, Bel Air, Harford County, Md.

3a. Does corporation transact all or any part of its business in Maryland: All in Maryland.

[fol. 372] 4. Names and addresses of officers;

W. H. Taylor, Pres., 1000 Chestnut St., Phila., Pa.
A. V. R. Coe, Sec., 1000 Chestnut St., Phila., Pa.
W. E. Long, Treas., 1000 Chestnut St., Phila., Pa.
H. R. Kern, Asst. Treas., 1000 Chestnut St., Phila., Pa.

5. Directors

M. R. Bockius, W. H. Taylor
C. E. Ingersoll, S. F. Tyler,
W. A. Law, S. A. Williams,
H. G. Lloyd, L. M. R. Willis,
Thos. Newhall, J. T. Windrim,
J. E. Zimmerman.

6. Capitalization

	Par per share	Authorized No. of shares	Issued No. of shares
Common Stock Class A	N. P. V.	135,000	110,500
Common Stock	N. P. V.	135,000	135,000
Other Classes		None	None
Total		270,000	245,500

7. Total bonded debt outstanding January 1, 1929: $36,000,000.00.*

8. On how much of the above debt has interest been paid during 1928: On entire amount.

9. Dividends declared in 1927 and 1928: None.

[fol. 373] 10. Net profits of the corporation (before deducting dividends or interest payments) for the year ending January 1, 1929: See answer to question 15.

11. How arrived at: Double entry system of accounting on accrual basis in accordance with the Md. P. S. Comm. Classification of Ac-ounts.

12. Amount on January 1, 1929: $4,866,886.36.

13. Gross earnings from all sources, without deductions for year ending January 1, 1929: $2,239,320.30.

14. Sale of stock during year: No sales. Price: No sale, hence no price. Estimate of present value: See note 14e.

Note 14e. This company shows no gain nor loss from operation therefore no value attaches to the stock other than its book value which is $19,824 per share.

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* This Company is a guarantor of $36,000,000 par value of 5½% 50-Year First Mortgage Gold Bonds, dated February 1, 1926, issued by the Philadelphia Electric Power Company, a Pennsylvania corporation, under a joint Mortgage and Deed of Trust to Fidelity Trust Co., Trustee, executed by the Philadelphia Electric Power Company and The Susquehanna Power Company. The entire amount of $36,000,000 is issued and outstanding as of this date.

15. Statement of income and expenditures and charges for year 1928

(This information should be classified)

Income

Rental and Disbursement of operating Expenses	$2,237,109.27
Interest on Bank Balances	2,211.03
	$2,239,320.30

Expenditures and Charges

Operation and Maintenance	$6,165.22
Renewals and Replacements	119,794.82
Interest on Advances	2,113,360.26
	$2,239,320.30

[fol. 374] 16. (Copy of Balance Sheet)

Statement of Assets and Liabilities as of January 1, 1929

The Susquehanna Power Company

Balance Sheet as of December 31, 1928

Asset Accounts

Fixed Capital Accounts: Construction Work in Progress		$45,797,111.42
Investment Accounts: Capital Stock of Sundry Companies		1.00
Special Deposit Accounts: Other Special Deposits		11,750.00
Current Asset Accounts:		
Cash	$117,271.05	
Accts. Rec. from Affiliated Cos.	859,841.51	
Other Accounts Receivable	155,705.12	
		1,132,817.68
		$46,941,680.10

Liability Accounts

Corporate Capital Liability Accounts:		
Capital Stock:		
110,500 Shares Class A Common Stock N. P. V.	$2,219,000.00	
135,000 Shares Class B Common Stock N. P. V	2,647,886.36	
		$4,866,886.36
Current Liability Accounts:		
Acct. Pay. to Affil. Cos.	$41,943,924.10	
Other Accounts Payable	11,074.82	
		41,954,998.92
Reserve Accounts: Reserve for Renewals & Replacements		119,794.82
		$46,941,680.10

16a. Depreciation reserve on buildings: $119,794.82.

[fol. 375] 17. Schedule No. 1

Statement of Net Worth

The Susquehanna Power Company, December 31, 1928

Assets

Current Assets:		
Cash	$117,271.05	
Accts. Rec. from Affil. Cos.	859,841.51	
Other Accts. Receivable	155,705.12	
		$1,132,817.68
Special Deposit Accounts:		
Other Special Deposits	11,750.00	
Investment Accounts:		
Capital Stk. of Sundry Cos.	1.00	
		$1,144,568.68
Fixed Properties:		
Detail on Schedule No. 2		45,677,316.60
		$46,821,885.28

Liabilities

Current Liabilities:		
Accts. Pay. to Affil. Cos.	$41,943,924.10	
Other Accts. Payable	11,074.82	
		41,954,998.92
Total Net Worth		$4,866,886.36

Schedule No. 2

The Susquehanna Power Company

Fixed Capital as of December 31, 1928

Description	Balance
Organization	$4.50
Land—$4,518,737.83 includes cost of relocation of C. & P. D. R. R. amounting to $3,770,119.21	4,518,737.83
Dams, Reservoirs and Water Conduits [fol. 376]	13,069,340.86
Power Plant Structures	2,608,259.23
Turbines and Water Wheels	2,800,430.64
Electric Generators	2,209,122.67
Other Electric Equipment	2,442,142.58
Other Power Plant Equipment	339,078.91
Land	25,343.94
Right of Way	67,475.43
Transmission System Structures	33,426.53
Sub-station Equipment	8,098.99
Poles and Fixtures	263,097.86
Overhead Conductors	152,165.78
Overhead Telephone System	4,525.81
Underground Conductors	5,505.24
Overhead Conductors	282.00
Meters	336.33
Meter Installations	177.99
Other General Structures	12,059.71
Other General Equipment	7,807.71
Eng. & Supt. during construction	3,305,737.73
General Office and Clerks' Salaries during construction	127.50

Description	Balance
General Office and Clerks' Expenses during construction	289.42
Office Supplies and Expenses during construction	4,297.19
Law Expenditures during construction	37,510.47
Injuries and Damages during construction	179.06
Insurance during construction	382,437.81
Taxes during construction	48,433.01
Interest during construction	3,322,733.23
Other Expenditures during construction	4,327,316.12
Land and Rights	5,800,629.34
Investment	$45,797,111.42
Less Accrued Depreciation	119,794.82
Investment in Fixed Capital depreciated to December 31, 1928	$45,677,316.60

Values cannot be accurately given and allocated until after final action is taken by the Federal Power Commission.

[fol. 377] 18. Amounts of inventories in 1928: None.

19. On what basis were inventories taken, whether at cost of market value, or other basis: No inventory taken.

19a. State whether any merchandise, materials or supplies were omitted from inventories; give particulars: No inventory taken.

20. Assessed value for 1929 of real estate owned by the corporation in Maryland, accompanied by certificate for the same from the Appeal Tax Court of Baltimore City or County Commissioners of the county where such real estate is located—from which appeals have been taken and are pending: $22,726,132.00.

21. Baltimore City Stock returned under Code, Art. 81, Sect. 168, owned by the corporation at the time of making this report and which was owned by it on January 1, 1929, and for six months continuously theretofore; and for which the certificate of the City Register of Baltimore is filed herewith, showing total par value of: None.

22. Deductible shares of stock of banks or other corporations of this State, returned under Code, Art. 81, Sect. 168, and which are owned by the corporation at the time of making this report and were owned by it on January 1, 1929, and for six months continuously theretofore: None. Description: None.

23. If said corporation has returned any shares under Question 22, state whether the same are owned by the corporation for which you are making this return, or are held by such corporation as a security for any loan or as a collateral security for any payment or other purpose, or as trustee or in any other fiduciary capacity: None.

H. R. Kern, Asst. Treasurer. (Corporate Seal.)

[fol. 378] *Assessment*

Aggregate Assessment	$28,726,132
Credits: Real Estate	22,726,132
Net Assessment	6,000,000
245,500 shares at $24.43+	$ 6,000,000

Assessment entered 10/10, 1929.

(Signed) Jesse D. Price, Edward O. Weant, Oscar Leser, Commissioners.

[fol. 379] Distribution

Harford County: No. of shares, 245,500; assessment, $6,000,000.

Assessment subject to State Tax: $6,000,000.

Tax: $15,444.00.

Share Corporations: Public Service.

The Susquehanna Power Company, 1000 Chestnut Street, Philadelphia, Pa., Annapolis, Md., to the State of Maryland, Dr.

This bill payable when rendered
Interest after October First
Penalty after November First

	Assessment	Tax
State Tax of 25-74/100c. per $100 on net aggregate assessment on shares of stock amounting to $6,000,000		$15,444.00
Penalty—10%		
Interest		
Penalty for failure to file schedule within time prescribed by law		
Total		$15,444.00

Make checks payable to Treasurer of Maryland and return bill.

(Copy)

(Banks, Financial Corporations, and Public Service Corporations)

State Tax Commission of Maryland, 504 Union Trust Building, Baltimore, Md.

October 11, 1929.

To the Susquehanna Power Company, 1000 Chestnut St., Philadelphia, Pa.:

This is to notify you that the following assessment has been made on the shares of the corporation for the current [fol. 380] year, and that the same will become final and conclusive unless sufficient reasons for a change therein shall be presented to the Commission within fifteen (15) days from this date. No change will be made in an assessment which has become final by reason of the lapse of the fifteen day period without protest.

State Tax Commission of Maryland. Thos. A. Murray, Jr., Secretary.

— shares at $— per share, $—.

Aggregate share valuation	$28,726,132
Credits: Real Estate, $22,726,132	22,726,132
Net aggregate assessment—245,500 shares at $24.43+	$6,000,000

APPELLEE'S ABSTRACT OF EXHIBIT NO. 1 OF THE COUNTY COMMISSIONERS OF HARFORD COUNTY

(Filed with the State Tax Commission of the State of Maryland on June 8th, 1929

Pool Agreement

Agreement Between Philadelphia Electric Power Company and the Susquehanna Power Company Relating to Conowingo Project

This Agreement, dated — day of ——, 1925, by and between Philadelphia Electric Power Company (formerly called "Susquehanna Water Power Company"), a corporation organized and existing under the laws of the Commonwealth of Pennsylvania (hereinaffer called "B"), and [fol. 381] The Susquehanna Power Company, a corporation organized and existing under the laws of the State of Maryland (hereinafter called "A"):

Witnesseth:—First, "B" shall with all reasonable dispatch and promptness and at its own cost and expense, construct all retaining walls, dikes, embankments and other appurtenances necessary or useful for that of the Pool located in Pennsylvania, within the following described area, to wit:

All that certain tract or parcel of land lying and being partly in the Township of Fulton, Drumore and Martic, Lancaster County, and partly in the Townships of Lower Chanceford and Peach Bottom, York County, Commonwealth of Pennsylvania, bounded and described as follows, to wit:

Beginning at the point where the boundary line between the Commonwealth of Pennsylvania and the State of Maryland intersects the first one hundred thirty (130) feet elevation contour line which is continuous along the bank of the Susquehanna River to the middle thread of a stream known as Fishing Creek, and which contour line lies east of the eastern shore of the said Susquehanna River (the said contour line and the other lines and points of elevation hereinafter mentioned being elevations above mean sea level);

Thence along the said one hundred thirty (130) feet elevation contour line and following the meanders, turnings

and windings thereof in a general northerly direction through said Fulton and Drumore Townships, Lancaster County and State aforesaid, to a point in said Drumore Township where said one hundred thirty (130) feet elevation contour line intersects the middle thread of said Fishing Creek;

Thence up said Fishing Creek and along the middle thread thereof to the one hundred thirty-five (135) feet elevation contour line;

Thence along the said one hundred thirty-five (135) feet elevation contour line and following the meanders, turnings and windings thereof in a general northwesterly direction [fol. 382] through said Drumore Township, Lancaster County and State aforesaid, to a point in said Drumore Township where said one hundred thirty-five (135) feet elevation contour line intersects the middle thread of a stream known as Cutler's Run (which flows into said Susquehanna River at or near Fites Eddy);

Thence up said Cutler's Run and along the middle thread thereof to the one hundred forty (140) feet elevation contour line;

Thence along the said one hundred forty (140) feet elevation contour line and following the meanders, turnings and windings thereof in a general northwesterly direction through said Drumore Township, Lancaster County and State aforesaid, to a point at or near the boundary line of the said Drumore Township where said one hundred forty (140) feet elevation contour line intersects the middle thread of a stream known as Muddy Run;

Thence up said Muddy Run and along the middle thread thereof to the one hundred fifty (150) feet elevation contour line;

Thence along said one hundred (150) feet elevation contour line and following the meanders, turnings and windings thereof in a general northwesterly direction through said Martic Township, Lancaster County and State aforesaid, to the line (or extension thereof) of the land of the Pennsylvania Water and Power Company as described in the deed of August 11, 1908, from McCall Ferry Power Company, et al. to Sowego Water and Power Company recorded in the Recorder of Deeds' Office in and for York County, Pennsylvania, in Record Book 16-I, page 416, and

in the Recorder of Deeds' Office in and for Lancaster County, Pennsylvania, in Record Book N, Volume 19, page 377;

Thence along said line of land of said Pennsylvania Water and Power Company, and across any intervening lands of the Columbia and Port Deposit Railway Company, to the Susquehanna River;

Thence across said Susquehanna River at the foot of [fol. 383] Cully's Falls (as described and existing at the date of the deed above referred to);

Thence in Lower Chanceford Township, York County and State aforesaid, and leaving the shore of said Susquehanna River and along the line of other land of the said Pennsylvania Water and Power Company on the west side of said Susquehanna River (in which land said Pennsylvania Water and Power Company has only a one-half undivided interest) to a point where said line, or extension thereof, intersects the first one hundred fifty (150) feet elevation contour line which is continuous along the bank of said Susquehanna River to the middle thread of a stream known as Muddy Creek, and which contour line lies west of the western shore of said Susquehanna River;

Thence along the said one hundred fifty (150) feet elevation contour line and following the meanders, turnings and windings thereof in a general southeasterly direction through said Lower Chanceford Township, York County and State aforesaid, to a point in said Lower Chanceford Township, York County and State aforesaid, where said one hundred fifty (150) feet elevation contour line intersects a line which passes through the end of the sixth course of this description in the direction, true south forty-five degrees true west, the end of the sixth course of this description being the point on the eastern side of said Susquehanna River in Lancaster County where the middle thread of Muddy Run (in Lancaster County intersects the aforesaid one hundred fifty (150) feet elevation contour line lying east of the eastern shore of said Susquehanna River;

Thence true north forty-five degrees true east to a point of intersection with the one hundred forty (140) feet elevation contour line which is continuous along the bank of said Susquehanna River to the middle thread of said Muddy Creek;

Thence along the said one hundred forty (140) feet elevation contour line and following the meanders, turnings and windings thereof in a general southeasterly direction through said Lower Chanceford Township, York County [fol. 384] and State aforesaid, to a point at or near the boundary line of the said Lower Chanceford Township, where said one hundred forty (140) feet elevation contour line intersects the middle thread of said Muddy Creek;

Thence down said Muddy Creek and along the middle thread thereof to the one hundred thirty-five (135) feet elevation contour line;

Thence along the said one hundred thirty-five (135) feet elevation contour line and following the meanders, turnings and windings thereof in a general southeasterly direction through said Peach Bottom Township, York County and State aforesaid, to a point in said Peach Bottom Township where said one hundred thirty-five (135) feet elevation contour line intersects the middle thread of a stream known as Cold Cabin Run;

Thence down said Cold Cabin Run and along the middle thread thereof to the one hundred thirty (130) feet elevation contour line;

Thence along the said one hundred thirty (130) feet elevation contour line and following the meanders, turnings and windings thereof in a general southeasterly direction through said Peach Bottom Township, York County and State aforesaid, to a point where said one hundred thirty (130) feet elevation contour line intersects the said boundary line between the Commonwealth of Pennsylvania and the State of Maryland aforesaid;

Thence along said boundary line in an easterly direction across the valley of the Susquehanna River to the point and place of beginning.

In witness whereof, the parties hereto have hereunto set their respective corporate seals and caused these presents to be signed by their respective Presidents or Vice-Presidents and attested by their respective Secretaries or Assistant Secretaries as of the date hereof.

[fol. 385] EXHIBIT No. 2 OF THE COUNTY COMMISSIONERS OF HARFORD COUNTY

(Filed with the State Tax Commission of the State of Maryland on June 8th, 1929)

To the Public Service Commission of the Commonwealth of Pennsylvania:

The supplemental petition of Susquehanna Water Power Company respectfully represents:

I. Upon consideration of the original petition filed in this case on or about February 24, 1925, and testimony offered by your petitioner since that time with regard thereto, the Commission has issued its interim report dated December 1, 1925, wherein the Commission on page 8 thereof states that in the judgment of the Commission, it is in the public interest to afford this applicant an opportunity to modify the master contract in accordance with the principles outlined by the Commission in said interim report.

II. Your petitioner, therefore, hereby submits the following modifications of the said master contract in order that it may be brought into substantial accord with the principles set forth in said iterim report, viz:

(1) Page 5, line 7, after word "at" insert words "or near."

(2) Page 6, line 10, after paragraph (f) insert: "'B' agrees that without the consent of the Federal Power Commission and the Public Service Commission of the Commonwealth of Pennsylvania first had and obtained, it will not issue any preferred stock with a dividend rate of more than eight per cent on the par value thereof;

"'B' further agrees that without the consent of the said Federal Power Commission and the Public Service Commission of the Commonwealth of Pennsylvania first had and obtained, it will not dispose of the ownership of the stock of 'A' about to be acquired by it from 'PX' under said 'B' securities agreement'; except that without such consent 'B' may assign or pledge same under any present

[fol. 386] or future corporate mortgage covering its plants and mortgageable physical property."

(3) Page 7, line 27, after paragraph (d) insert: "'PX' further agrees that without the consent of the Federal Power Commission and of the Public Service Commission of the Commonwealth of Pennsylvania first had and obtained, it will not dispose of the ownership of the said common stock of 'B'; except without such consent, 'PX' may assign or pledge same under any present or future corporate mortgage covering its plants and mortgageable physical property: "'PX' also agrees that without the consent of the said Federal Power Commission and the Public Service Commission of the Commonwealth of Pennsylvania first had and obtained, it will not dispose of the ownership of the stock of 'X'; except without such consent 'PX' may assign or pledge same under any present or future corporate mortgage covering its plants and mortgageable physical property."

III. Your petitioner further hereby submits the following modifications of the other exhibits to said original petition in order that said other exhibits may be brought into substantial accord with the principles set forth in said interim report, viz:

(2) Pool Agreement.—This agreement will be modified in accordance with the changes set forth in the supplemental petition filed with the Commission of even date herewith in Docket No. 12403, 1925.

(3) Lease of Maryland Properties.—This lease will be modified as follows:

Page 2, line 33 (fifth line from bottom of page) strike out word "six" and insert the word "seven."

Page 2, line 34, strike out "50,000" and insert "43,000."

Page 2, line 37, strike out the words "seven 44,000 kilovolt ampere transformers or transformers of equivalent capacity," and insert in lieu thereof the following, "the necessary transformers."

Page 4, line 2, and page 8, line 4, insert a period after the word "lease" and strike out the following: "and to [fol. 387] be the basis for the payment of increased rental as therein provided."

Page 9, line 18, after the word "charter" strike out all matter on pages 9, 10 and 11 and through and including the 13th line on page 12 and insert in lieu thereof the following: "obligations as 'X' may not be able to perform 'X' as such lessee yielding and paying unto 'A' as lessor, its successors and assigns, at such place as hereafter the lessor, its successor or assigns, shall designate by written notice to the lessee, an annual rental, payable in quarterly installments on or before the 25th days of January, April, July and October of each year for the quarter ending with the preceding month.

"The rental payment for any quarter shall be one-quarter of an amount equal to seven per cent (7%) of the actual legitimate investment made by 'A' in the Conowingo project as at the end of said quarter year.

"In determining the rental payments for any quarter year, the term 'actual legitimate investment' shall be construed to mean the sum total of:

"(I) The actual legitimate investment as defined and interpreted in the Federal Water Power Act and in the rules and regulations of the Federal Power Commission issued under date of June 6, 1921, made in the project from the date of the Federal license, and "(II) The actual legitimate investment in the project up to the date of the license to be issued by the Federal Power Commission as determined in accordance with the provisions of said license.

"Said rental shall commence when the first hydroelectric unit and transmission equipment of the said 'Initial Conowingo Project' are ready to deliver power to 'B's' Pennsylvania transmission lines to Lower Merion Township at the Pennsylvania-Maryland State boundary line and said transmission lines are ready to transmit the power and shall be one-seventh of the aforesaid rental with an increase of an additional one-seventh of such rental as each additional one-seventh of the total approximately 300,000 horse-power is ready for delivery as aforesaid.

"In case the dates upon which the aforesaid rental pay- [fol. 388] ments come into effect hereunder do not coincide with the beginning of the calendar year or of a quarter of such year, then such rental shall be prorated for the respective periods during which such changes first come into effect.

"The rental hereinabove specified shall be subject to such changes in amount or in basis of calculation of said rental, or of any part thereof, as may be ordered from time to time by the Public Service Commission of Maryland, the Public Service Commission of the Commonwealth of Pennsylvania, the Federal Power Commission, or of any of their successors, within the respective powers and jurisdictions of each as determined by the Constitution and laws of the State of Maryland, of the Commonwealth of Pennsylvania, and of the United States, respectively."

Page 13, line 28, strike out the following:

"Third, All electrical energy used as a basis for computing rent hereunder shall be measured as hereinbefore provided, and by meters," and in lieu thereof insert the following: "Third, All electrical energy shall be measured by meters."

Page 15, line 3, change "50,000" to "43,000."

Page 15, line 4, change "six" to "seven."

Page 15, line 11, insert a period after "X" and strike out the following: "Provided that upon completion of such additional unit or units and/or transmission line, the payments of standby charges and minimum payments of rental herein provided shall be increased in a proportion not less than that by which the actual legitimate original cost (as defined in the Federal Water Power Act of 1920) to 'A' of that portion of said Conowingo project in Maryland shall be increased by the installation of such additional units and/or transmission line, 'X' hereby covenanting and agreeing to pay said increased rental upon the completition of the installation of such additional units and/or transmission line."

Page 15, line 27, strike out the following: "'X' shall pay increased standby charges and increased minimum payments of rental as hereinbefore provided in this Article Fourth in a proportion not less than that by which the [fol. 389] total of the said actual legitimate original cost of 'A' of that portion of said Conowingo project in Maryland shall be increased by the cost of (1), such additions, extensions or improvements as may be required by 'X,' or (2), by the cost of such additions, extensions or improvements thereto as shall be made by 'A' in order to comply

with 'A's' obligations to 'B' under the provisions of the 'pool agreement,' or (3), by the cost of such additions, extensions or improvements thereto as shall be made by 'A' in order to comply fully with 'A's' charter obligations in the State of Maryland; such increased rental in each and every such case to commence to be payable upon the completion of the installation of any addition, extension or improvement so made," and insert in lieu thereof the following: "In any such event 'X' shall pay additional rental as herein provided."

Page 18, line 3, change "six" to "seven".

(4) Lease of Pennsylvania Transmission Lines to Lower Merion Township. This lease will be modified in accordance with the changes set forth in the Supplemental Petition filed with the Commission of even date herewith in Docket No. 12402, 1925.

(5) Operating Agreement. This agreement need not be modified.

(6) Guaranty Agreement. This agreement need not be modified.

(7) "A" Securities Agreement. This agreement will be modified as follows:

Page 2, line 27, strike out the following—"And Whereas, the capital stock of 'B' consists of four classes, to wit: First Preferred Stock, Second Preferred Stock and Class A and Class B Common Stock"; and in lieu thereof insert the following— "And Whereas, the capital stock of 'B' consists of two classes, to wit: Preferred Stock and Common Stock.

Page 5, line 10, strike out the following—"First Preferred Stock, Second Preferred Stock and/or Common [fol. 390] Stock, Class A and/or Class B," and in lieu thereof insert the following—"Preferred Stock and/or Common Stock".

(8) "B" Securities Agreement. This agreement will be modified in accordance with the changes set forth in the Supplemental Petition filed with the Commission of even date herewith in Docket No. 12405, 1925.

Wherefore your petitioner prays your Honorable Commission to issue a Certificate of Public Convenience under

Section 3(a) and other relevant sections of Article III, and Sections 18 and 19 of Article V of the Public Service Company Law, evidencing its approval of (a) obtaining by your petitioner of additional rights, powers, franchises or privileges by and under a Limited Power Permit dated May 20, 1924, issued to it under the Act of June 14, 1923; and (b) of the plan for the exercise thereof, as set forth in an agreement herein referred to as Master Contract, as herein modified, between your petitioner, the Philadelphia Electric Company, The Susquehanna Power Company and the Susquehanna Electric Company, in conjunction with other Certificates of Public Convenience, if any, which may be issued by your Honorable Commission in evidence of your approval of such portions of the said plan as, under the provisions of the Public Service Company Law, may require specific approval.

And your petitioner will ever pray, etc.

Susquehanna Water Power Company, by Nathan E. Hause, President.

Duly acknowledged before Helen M. Miller, a Notary Public for Pennsylvania, January 4, 1926, and duly recorded.

[fol. 391] APPELLEE'S ARSTRACT OF EXHIBIT NO. 3 OF THE COUNTY COMMISSIONERS OF HARFORD COUNTY

(Filed with the State Tax Commissioners of the State of Maryland on June 8th, 1929)

BEFORE THE PUBLIC SERVICE COMMISSION OF COMMONWEALTH OF PENNSYLVANIA

Application Docket No. —, 1925

In re Application of SUSQUEHANNA WATER POWER COMPANY for Certificate of Public Convenience Evidencing the Commission's Approval of the Obtaining of Additional Rights, Powers, Franchises or Privileges and the Exercise Thereof in Accordance with the Plan Provided in a Certain Agreement Between Petitioner, The Philadelphia Electric Company and Others

To the Public Service Commission of the Commonwealth of Pennsylvania:

The petition of Susquehanna Water Power Company respectfully represents:

1. That the name and address of petitioner are: Susquehanna Water Power Company, Harrisburg, Pa., to be hereafter called Philadelphia Electric Power Company.

2. That the names and addresses of your petitioner's attorneys are: Morgan, Lewis & Bockius, 934 Land Title Building, Philadelphia, Pa.; Hause, Evans & Baker, Telegraph Building, Harrisburg, Pa.

3. That your petitioner was incorporated on the 28th day of April, 1924, under an Act of the General Assembly of Pennsylvania entitled "An Act authorizing the merger and consolidation of certain corporations," approved the third day of May, 1909, by the merger and consolidation of the following named corporations, all organized on December 31, 1923, under the Act of the General Assembly of the Commonwealth of Pennsylvania entitled "An Act to pro- [fol. 392] vide for the Incorporation and Regulation of Certain Corporations," approved April 29, 1874, and the amendments and supplements thereto, for the purposes of the supply, storage or transportation of water and water power, for commercial and manufacturing purposes, in the Townships (all in the State of Pennsylvania) hereinafter mentioned, to wit:

Susquehanna Water Power Company, in the Township of Drumore, Lancaster County.

Lower Chanceford Township Water Power Company, in the Township of Lower Chanceford, York County.

Martic Township Water Power Company, in the Township of Martic, Lancaster County.

Peach Bottom Township Water Power Company, in the Township of Peach Bottom, York County.

Fulton Township Power Company, in the Township of Fulton, Lancaster County.

That in pursuance of proper corporate action the name and title of your petitioner will be changed from Susquehanna Water Power Company to Philadelphia Electric Power Company.

Your petitioner now has no bonded indebtedness. Its authorized capital stock is $50,000, to which $5,000 is issued and outstanding. The amount of stocks and bonds of your

petitioner which will be authorized, issued and outstanding when the proposed plan and financing hereinafter set forth have been completed, will be as follows:

	Authorized	Issued and outstanding
First Mortgage bonds to be secured by the joint and several Mortgage of the petitioner and The Susquehanna Power Company, the first series to consist of the bonds of your petitioner, guaranteed by said Susquehanna Power Company	$38,000,000.	$38,000,000.
And Bonds reserved for other Series for future issue	$22,000,000.	None
First Preferred Stock	$30,000,000.	$14,455,000.

Second Preferred Stock, Class A Common Stock, Class B Common Stock

A statement of these classes of stock will be filed hereafter as a supplement hereto.

[fol. 393] 5. Your petitioner requests the approval of the Commission to the obtaining by your petitioner of the additional rights, powers, franchises or privileges set forth and contained in a certain Limited Power Permit for a Change in Stream to Develop Water Power within the Jurisdiction of the United States, dated May 20, 1924, issued to your petitioner as holder or permittee, by the Water and Power Resources Board of the Department of Forests and Waters of the Commonwealth of Pennsylvania, giving the consent of said board to the making of a change in the stream of the Susquehanna River and its several tributaries to develop water power within the jurisdiction of the United States by means of a power dam to be erected in said river in the State of Maryland by The Susquehanna Power Company, a corporation of the State of Maryland, its successors or assigns, and affiliated or associated with the permittee on behalf of a power project for use in public service.

6. That the exercise of the additional rights, powers, franchises or privileges under said limited power permit, contemplates the erection of a power dam in the Susquehanna River in the State of Maryland, by The Susquehanna Power Company, a corporation of the State of Maryland, its successors or assigns, affiliated or associated with the petitioner, and the erection of high tension transmission lines referred to in paragraph 7 hereof; and in order to provide for the financing of said power project an agreement will be entered into substantially in the form attached hereto, as an exhibit marked "Master Contract," between the following named four companies, to wit:

Said The Susquehanna Power Company, a corporation of the State of Maryland, called "A," party of the first part; your petitioner, called "B," party of the second part; the Susquehanna Electric Company, a corporation of the State of Maryland, called "X," party of the third part; the Philadelphia Electric Company, a corporation of the State of Pennsylvania, called "PX," part of the fourth part,

7. That said master contract and the agreements to be entered into in pursuance thereof, referred to therein, provide the plan for the construction of said power dam across [fol. 394] the Susquehanna River in Maryland, and for the creation of the pool of water which will be partly in the State of Pennsylvania and partly in the State of Maryland, and the construction of the hydro-electric plant in Maryland for the generation of electrical energy by means of said water power, and the high tension transmission lines in connection therewith, the whole being referred to as the "Initial Conowingo Project," or the "Conowingo Project," in compliance with the laws of the United States of America and the States of Pennsylvania and Maryland, an outline thereof being substantially as follows:

Your petitioner and said The Susquehanna Power Company have made application to the Federal Power Commission under the provisions of an Act of Congress of the United States of America, approved June 10, 1920, known as the Federal Water Power Act, for a license to construct a hydro-electric development on the Susquehanna River in Maryland and in Pennsylvania, and the

transmission lines thereof, known as the Conowingo project, and will be the joint owners of said license when issued.

Said The Susquehanna Power Company is a public service company incorporated on October 29, 1919, under the general laws of the State of Maryland, and as successor to Susquehanna Power Company is vested with the powers conferred upon said company under a special act of the Legislature of Maryland, Chapter 268 of Laws of 1908, and has power inter alia to construct, operate and maintain a dam and power plant for the generation, transmission and sale of electrical energy from the waters of the Susquehanna River.

Your petitioner will construct at its own cost and expense all retaining walls, dikes, embankments and other appurtenances necessary for the portion of the pool located in Pennsylvana, and has acquired or will acquire the lands or rights to overflow or flood lands necessary therefor within the State of Pennsylvania, and will do or cause to be done all things necessary or incidental to the relocation of public roads, highways, and railroads affected by said pool.

[fol. 395] Your petitioner will also construct in Pennsylvania high tension transmission lines connecting at the Pennsylvania-Maryland boundary line with high tension transmission lines to be constructed in Maryland by The Susquehanna Power Company, including lines from a point on said State boundary line to the boundary line of Lower Merion Township, Montgomery County, Pennsylvania, where the same will connect with transmission lines of the Philadelphia Electric Company.

Your petitioner will acquire at its own expense and cost all the property, rights and franchises for that portion of the Conowingo project situated within the State of Pennsylvania, and will do or cause to be done all acts and things necessary to construct the same ready for operation.

The Susquehanna Power Company has acquired or will acquire within the State of Maryland the lands, property and rights required for the project and will construct at its own cost and expense the dam, hydro-electric plant and the high tension transmission lines from said plant connecting at the Pennsylvania-Maryland border with the transmission lines to be constructed by your petitioner here-

inbefore referred to, together with all necessary machinery, appurtenances and equipment.

Said company will acquire at its own expense and own all the property, rights and franchises for that portion of the Conowingo project situated within the State of Maryland, and will do or cause to be done all acts and things necessary to construct the same ready for operation.

8. The cost of said Conowingo project will be financed by means of bonds secured by a first mortgage upon all the property of your petitioner and The Susquehanna Power Company, constituting the Conowingo project, and by the sale of the first preferred stock, second preferred stock, and Class A and Class B common stock of your petitioner as more fully set forth in the following paragraphs.

Said mortgage will be executed and delivered by your petitioner and The Susquehanna Power Company as mort- [fol. 396] gagors to Fidelity Trust Company (of Philadelphia, Pa.), as trustee, substantially in the form attached hereto as an exhibit marked "First Mortgage" and will be a first lien on all their properties, real, personal and mixed now owned or hereafter acquired (except corporate securities not specifically pledged), and will secure first mortgage bonds to a total authorized principal amount of $60,000,000 outstanding at any one time, of which the first series of $38,000,000 principal amount will be issued by your petitioner and unconditionally guaranteed by The Susquehanna Power Company to mature 46 years from their date and to bear interest at the rate of 5½ per cent per annum.

A part of the cost of the Initial Conowingo Project will be paid from the proceeds of said first series of bonds in a principal amount not in excess of 75% of said cost. The balance of said bonds are reserved for future issue for permanent additions to said Conowingo Project under restrictions contained in said mortgage. The agreement between your petitioner and The Susquehanna Power Company with respect to said mortgage is contained in said Master Contract and in the agreement to be entered into between them, known as "'A' Securities Agreement," hereinafter more fully referred to.

9. In pursuance of the provisions of said Master Contract, your petitioner will enter into an agreement with said The Susquehanna Power Company, substantially in

the form attached hereto, as an exhibit marked "Pool Agreement," whereby inter alia your petitioner agrees that The Susquehanna Power Company shall be assessed the full benefit from the pool in Pennsylvania in connection with said Conowingo Project for the term of 50 years from the date of issue of said Federal license and for the additional term of any renewals or extensions thereof; excepting and reserving, however, unto your petitioner the use of so much of the water from said pool as may be required by your petitioner to enable it to comply fully with its charter obligations.

The Susquehanna Power Company covenants under said agreement to furnish or cause to be furnished to your petitioner, at such point or points on the Pennsylvania-Maryland State line as your petitioner may designate, so much [fol. 397] of the electrical energy produced by the hydro-electric plant in Maryland as your petitioner may at any time require for distribution in Pennsylvania to purchasers and consumers other than the Philadelphia Electric Company, in order to comply with your petitioner's charter obligations, and your petitioner agrees to pay for such electrical energy an amount to be agreed upon, subject to the regulation of any State or Federal Commission having jurisdiction thereof.

The Susquehanna Power Company agrees to pay or cause to be paid to your petitioner annually the sum of $275,000, subject, however, to such changes in said sum as may be ordered from time to time by the Public Service Commission of Maryland, of Pennsylvania, or the Federal Power Commission, within the respective powers and jurisdictions of each as determined by the Constitution and laws of Maryland, of Pennsylvania and of the United States, respectively, payable in quarterly installments beginning with the first quarterly date after the completion of the first 50,000 horsepower unit of the Conowingo Project, and in addition all operating expenses and the cost of maintaining the property necessary or useful for the operation and maintenance of said pool in Pennsylvania in first class operating condition, as well as such depreciation charges as are or may be required by the Federal Power Commission or other duly authorized public body, and all taxes payable by your petitioner on account of said property and all other governmental charges and fees. Your petitioner agrees

that the undertaking by the Philadelphia Electric Company to faithfully perform the covenants and conditions agreed to be performed by it under a lease between your petitioner and said company, known as "Lease of Pennsylvania Transmission Lines to Lower Merion Township," hereinafter more fully referred to, shall constitute and be deemed and considered to be a full and complete discharge of The Susquehanna Power Company's obligation to pay $275,000 annually, and its other financial obligations to your petitioner under said Pool Agreement.

A separate application will be filed by your petitioner for a Certificate of Public Convenience evidencing the Commission's approval of said Pool Agreement by which a part [fol. 398] of your petitioner's property is made available for the benefit of The Susquehanna Power Company.

10. In pursuance of the provisions of said Master Contract, The Susquehanna Power Company and the Susquehanna Electric Company will enter into an agreement of lease substantially in the form hereto annexed as an exhibit, marked "Lease of Maryland Properties," whereby The Susquehanna Power Company agrees to lease to the Susquehanna Electric Company all real estate in Maryland, and rights to overflow and flood the area covered by the Maryland part of the pool, the dam, power plant, machinery, equipment and appurtenances, and the transmission lines to the Pennsylvania-Maryland boundary, together with the lessor's rights under the Pool Agreement, for the rental and upon the terms set forth in said lease (excepting and reserving, however, unto the lessor the use of so much of the demised premises as may be required by the lessor to enable it to comply fully with such of its charter obligations as the lessee may not be able to perform.)

Said the Susquehanna Electric Company is a public service corporation organized and existing under the laws of the State of Maryland for the purpose, among other things, of generating, transmitting and selling electrical energy, The Philadelphia Electric Company will be the owner of all the capital stock of said the Susquehanna Electric Company.

11. In pursuance of the provisions of said master contract your petitioner will enter into an agreement with the Philadelphia Electric Company, substantially in the form

attached hereto as an exhibit marked "Lease of Pennsylvania Transmission Lines to Lower Merion Township," whereby inter alia your petitioner agrees to lease to the Philadelphia Electric Company the strip or strips of lands of suitable width, or rights of way, extending from a point on the Pennsylvania-Maryland State boundary line to a point of connection on the boundary line of Lower Merion Township with similar transmission line rights of way of the Philadelphia Electric Company, together with transmission lines, equipment and appurtenances to be erected [fol. 399] thereon, for the term of 50 years from the date of issue of said Federal License and for the additioanl term of any renewals or extensions thereof, expressly excepting and reserving to your petitioner, its successors and assigns, the right at all times to transmit over said leased transmission lines any electrical energy which your petitioner may require to distribute to purchasers and consumers other than the Philadelphia Electric Company, in order to comply with your petitioner's charter obligations. The obligations assumed by the Philadelphia Electric Company, which are fully set forth in said lease, include a minimum rental of $550,000 per annum, subject to such changes in amount or in basis of calculation of said rental, or of any part thereof, as may be ordered from time to time by the Public Service Commission of Maryland, of Pennsylvania, the Federal Power Commission, or any of their successors, within the respective powers and jurisdictions of each as determined by the Constitution and laws of Maryland, of Pennsylvania, and of the United States, respectively. Said minimum rental becomes fully effective only upon completion of the Conowingo project so that it is ready for delivery to the Philadelphia Electric Company of power from all six hydro-electric units.

That in consideration thereof, your petitioner agrees to accept the Philadelphia Electric Company's undertaking to pay said rent in full payment of the sums agreed to be paid by The Susquehanna Power Company to your petitioner under said pool agreement, releasing and discharging The Susquehanna Power Company from all liability for said payments.

A separate application will be filed by your petitioner for a certificate of public convenience evidencing the Commission's approval of said Lease of Pennsylvania Transmis-

sion Lines to Lower Merion Township to the Philadelphia Electric Company.

12. In pursuance of the provisions of said master contract the Susquehanna Electric Company and the Philadelphia Electric Company will enter into an agreement substantially in the form attached hereto as an exhibit marked "Operating Agreement," whereby inter alia the Susquehanna Electric Company agrees, subject to the approval thereof by the Public Service Commission of Maryland, of [fol. 400] Pennsylvania and/or the Federal Power Commission within the respective powers and jurisdictions of said Commission, as determined by the Constitution and laws of Maryland, of Pennsylvania, and the United States, respectively, to deliver to the Philadelphia Electric Company, at the point or points of connection of the high tension transmission lines at the Pennsylvania-Maryland State boundary line, the maximum amount of hydro-electric energy consistent with the capacity of the hydro-electric plant and transmission lines, subject to all the requirements of The Susquehanna Power Company and the Susquehanna Electric Company for distribution of electricity in Maryland to comply fully with their charter obligations, and the requirements of your petitioner for distribution in Pennsylvania to purchasers and consumers, other than the Philadelphia Electric Company, to comply fully with your petitioner's charter obligations.

The Philadelphia Electric Company agrees to assume and discharge any and all of the financial obligations of the Susquehanna Electric Company to The Susquehanna Power Company arising under said Lease of Maryland Properties, including the covenants to pay rent and to pay for the cost of operating and maintaining the property of The Susquehanna Power Company; and also agrees to assume the payment of all taxes payable by the Susquehanna Electric Company, except taxes arising out of the ownership, operation or control of properties other than the Conowingo project. Any revenues accruing to the Susquehanna Electric Company through sales of electricity other than to the Philadelphia Electric Company are to be credited on account of operation and maintenance expenses.

Your petitioner is informed and believes that an application will be made by the Philadelphia Electric Company

to the Commission for its approval of said agreement for electric energy or power.

15. In pursuance of the provisions of said master contract you petitioner and the Philadelphia Electric Company will enter into an agreement, substantially in the form attached hereto as an exhibit marked "'B' Securities Agreement," whereby it is agreed, subject to the approval thereof by the Federal Power Commission, inter alia, that, [fol. 401] in order to provide the additional funds required to pay the cost of the Conowingo project over and above the proceeds from the first mortgage bonds, the Philadelphia Electric Company shall purchase or underwrite at par 578,200 shares of the first preferred stock of your petitioner, to be non-voting, of the par value of $25 per share, callable at $28 per share and entitled to $25 per share and accumulated and unpaid dividends in case of liquidation and entitled to cumulative dividends at the rate of $2 per share per annum; and also to purchase at par the second preferred stock of your petitioner in such amount as will provide the necessary additional funds to complete said Conowingo project; said second preferred stock to be non-voting, of the par value of $25 per share, callable at $28 per share, convertible under limitations to be agreed upon between said parties into first preferred stock, and entitled to cumulative dividends, subject to the dividends on the first preferred stock, at the rate of $2 per share per annum, and entitled in case of liquidation to $25 per share and accumulated and accrued and unpaid dividends, after full distribution to the first preferred stock.

Said agreement further provides that your petitioner shall have an authorized common stock to be divided into Class A common stock and Class B common stock, each class being entitled to equal participation in dividends and in distribution of assets in case of liquidation, but Class A shares to be without voting power.

In consideration of the covenants by the Philadelphia Electric Company therein contained and of its services to the enterprise performed and agreed to be performed by it and of the obligations assumed by it in said "Master Contract" and the annexed leases and agreements, your petitioner agrees to deliver to the Philadelphia Electric Company all shares of the capital stock of your petitioner

outstanding at the time of the execution of said agreement except directors' qualifying shares, 578,200 shares of its Class "A" common stock and one share of its Class "B" common stock for each share of its second preferred stock issued thereunder.

Your petitioner also agrees to take the necessary corporate action to authorize its first preferred stock, second [fol. 402] preferred stock and Class A and Class B common stock, in amounts necessary to perform its obligations contained in said agreement.

Said agreement also provides that the proceeds of said bonds and of said stocks of your petitioner shall be deposited with the trustee under said Mortgage as further security for the payment of said bonds, and shall only be withdrawn from time to time as needed to meet the said cost of the Conowingo Project upon filing with the trustees of certificates or vouchers as prescribed in said Mortgage.

A separate application will be made by the Philadelphia Electric Company for the Commission's approval of the purchase or acquisition of said shares of capital stock of your petitioner.

16. Your petitioner is advised and believes and therefore avers that The Susquehanna Power Company and the Susquehanna Electric Company are not and will not be engaged in business within the Commonwealth of Pennsylvania.

Susquehanna Water Power Company, by Nathan E. Hause, President.

Duly sworn and subscribed before Helen M. Miller, Notary Public, of Philadelphia, Pennsylvania, February 21, 1925.

[fol. 403] Abstract of County Exhibit No. 3 (Continued)

Master Contract

The Susquehanna Power Company, Philadelphia Electric Power Company, The Susquehanna Electric Company, and The Philadelphia Electric Company

Relating to the Conowingo Project

(Modified by Master Contract Dated Feb. 1st, 1926)

Dated —— —, 1925.

This Agreement, dated this — day of ——, A. D. 1925, between The Susquehanna Power Company, a corporation of the State of Maryland, hereinafter called "A," party of the first part; Philadelphia Electric Power Company (formerly called "Susquehanna Water Power Company"), a corporation of the State of Pennsylvania, hereinafter called "B," party of the second part; the Susquehanna Electric Company, a corporation of the State of Maryland, hereinafter called "X," party of the third part; and The Philadelphia Electric Company, a corporation of the State of Pennsylvania, hereinafter called "PX," party of the fourth part,

Witnesseth That: Whereas, the parties to this agreement are all parties concerned with and interested in the development of the Conowingo Project for the construction and erection of a dam across the Susquehanna River to develop water power by the use of the facilities and physical properties of "A" and "B" and the generation of electrical energy therefrom by "X" primarily for delivery to and use thereof by "PX";

And Whereas, "A" is the owner of certain dam sites and other real property in the State of Maryland upon which [fol. 404] will be located the proposed dam and has certain corporate rights and franchises in the State of Maryland available for use in the said Conowingo Project, including the power of eminent domain through the use of which transmission lines may be constructed from the aforesaid dam site to a point upon the state line between Maryland and Pennsylvania convenient for the junction with transmission lines in the State of Pennsylvania;

And Whereas, "B" is the owner of certain real property and other rights in the State of Pennsylvania, which are available for the construction of a dam upon the Susquehanna River above the said dam site upon the property of "A" and capable of the development of water power, but less than the power capable of being developed by a dam constructed upon the property of "A," and therefore said property of "B" is essential to the full development of the Conowingo Project;

And Whereas, "B" is possessed *to* certain corporate rights and franchises, and particularly the power of eminent domain, by virtue of which "B" may construct transmission lines from the properties owned by it to a point upon the state line between Maryland and Pennsylvania to join with the transmission lines to be constructed by "A," and therefrom to the boundary line of Lower Merion Township to join with the lines of "PX";

And Whereas, It is desirable for legal and financial reasons and for economy in manaagement and unity of operation that "A" shall lease certain of its property to "X," including the power plant and equipment thereof, and the transmission lines and appurtenances thereof, owned by or hereafter acquired or constructed by "A";

And Whereas, "PX" is the owner of electrical power plants, transmission and distribution lines in the city and county of Philadelphia and the vicinity, and is engaged in the sale and distribution of electrical energy to persons, firms and corporations under and by virtue of contracts presently entered into and others now under negotiation, the aggregate volume of electrical energy required therefor being such that extensive enlargements of the generating faiclities of "PX" or the early acquisition of electrical energy from elsewhere has become essential;

[fol. 405] And Whereas, "PX" is advised that the most permanent and economical source for the supply to it of electric energy for use by it in performing its services to the public will be from the water power to be developed by the Conowingo project; and is therefore desirous of insuring the early, complete and economical construction and operation of the aforesaid Conowingo project;

And Whereas, It is proposed that the funds to defray the cost of the aforesaid Conowingo project, including the

construction of the transmission lines in the State of Maryland and in the State of Pennsylvania, shall be obtained partly by the sale of first mortgage bonds, which shall be a first lien upon the aforesaid properties of "A" and "B," and partly by the sale of preferred and common stock of "B";

It Is Therefore Hereby Agreed, By and between the aforesaid parties that they and each of them will enter into the following described agreements and will undertake and perform the herein and therein described obligations, subject, however, to the approval hereof by the Public Service Commission of Maryland, the Public Service Commission of the Commonwealth of Pennsylvania, and the Federal Power Commission, within the respective powers and jurisdictions of each as determined by the Constitution and laws of the State of Maryland, of the Commonwealth of Pennsylvania, and of the United States, respectively.

1. Undertakings by "A"

(a) "A" agrees to acquire the lands and rights of way, in addition to those already owned by it, and pay all damages necessary for the construction, operation and maintenance of the dam across the Susquehanna River in the State of Maryland and the power plant and the transmission lines in the State of Maryland, and to construct the dam, power plant and equipment thereof and the transmission lines and appurtenances thereto, more particularly described in the exhibit hereto attached entitled "Lease of Maryland Properties."

(b) "A" agrees to execute a mortgage, jointly and severally with "B" which shall be a first lien upon all the [fol. 406] property of "A" now owned or hereafter acquired (except securities not specifically pledged thereunder), as security for bonds to be issued by "B" and guaranteed by "A," the first series thereof to be in the aggregate principal amount of $38,000,000, a copy of which mortgage is attached hereto as an exhibit and identified as "First Mortgage, Philadelphia Electric Power Company and The Susquehanna Power Company to Fidelity Trust Company, Trustee."

(c) "A" agrees to enter into an agreement with "B" regarding the creation, maintenance and operation of the pool in Pennsylvania, a copy of which agreement is attached hereto as an exhibit and identified as "Pool Agreement."

(d) "A" agrees to lease to "X" its property under and subject to the mortgage aforesaid together with "A's" rights under "A's" agreement with "B" known as "Pool Agreement," a copy of said lease being attached hereto as an exhibit and identified as "Lease of Maryland Properties."

(e) "A" agrees to issue to "B" its capital stock, which shall be purchased by "B" in accordance with the terms and conditions of the agreement, a copy of which is attached hereto as an exhibit and identified as "'A' Securities Agreement."

(f) "A" agrees to join with "B" in securing the necessary licenses, permits and consents for the construction of the aforesaid Conowingo project from the Federal Power Commission and such other governmental authorities as may be required under advice of counsel and upon request of "PX" and "X" to make application for any renewals or extensions of any licenses, permits or other necessary governmental authority.

4. Undertakings by "PX"

(a) "PX" agrees to lease from "B" the Pennsylvania transmission lines to Lower Merion Township, Montgomery County, Pennsylvania, and to pay to "B" the sums payable by "A" to "B" as set forth in the "Pool Agreement" under the terms and conditions set forth in the [fol. 407] lease hereto attached as an exhibit and identified as "Lease of Pennsylvania Transmission Lines to Lower Merion Township."

(b) "PX" agrees to enter into the agreement with "X," a copy of which is hereto attached as an exhibit and identified as "Operating Agreement," providing for the delivery to "PX" of electrical energy, for the assumption by "PX" of the financial obligations of "X" to "A"

as lessee under the "Lease of Maryland Properties" and the payment by "PX" of the operating expenses of "X."

(c) "PX" agrees in consideration of the undertakings by "A" with "X" set forth in said "Lease of Maryland Properties," to enter into the agreement with "A," a copy of which is attached hereto as an exhibit and identified as "Guaranty Agreement," guaranteeing to "A" the performance of "X" of the terms and conditions of said "Lease of Maryland Properties."

(d) "PX" agrees to purchase or underwrite the sale of the preferred and common share of the stock of "B" in accordance with the agreement, a copy of which is attached hereto as an exhibit and identified as "B" Securities Agreement."

(e) "PX" agrees, if and when requested by "A" or "B" so to do, to join in any and all consents or applications required to perfect the applications filed by "A" and "B" with the Federal Power Commission and any other governmental authorities whose approval or consent may be required to proceed with the said Conowingo Project.

In witness whereof the said parties have caused their common or corporate seals to be affixed hereto, fully attested by their proper officers, as of the day and year aforesaid.

[fol. 408] Abstract of County Exhibit No. 3 (Continued)

Lease of Maryland Properties

Agreement of Lease by The Susquehanna Power Company to The Susquehanna Electric Company

Relating to the Conowingo Project

Modified by Lease of Feb. 1st, 1926.

Dated —— —, 1925.

This Agreement of Lease, dated this — day of ——, A. D. 1925, by and between The Susquehanna Power Company, a corporation organized and existing under the laws of the State of Maryland (hereinafter called "A"), Lessor,

and the Susquehanna Electric Company, a corporation also organized and existing under the laws of the State of Maryland (hereinafter called "X"), Lessee, Witnesseth:

Whereas, "A" is a corporation organized for the purpose inter alia of constructing, operating and maintaining a dam and power plant for the generation, transmission and sale of electrical energy from the waters of the Susquehanna River, having its principal office in the town of Bel Air, Maryland;

And Whereas, "A" in conjunction with Philadelphia Electric Power Company (formerly called "Susquehanna Water Power Company"), a corporation organized and existing under the laws of the Commonwealth of Pennsylvania (hereinafter called "B") is the holder of a Federal license to construct a hydro-electric development on the Susquehanna River in Maryland and Pennsylvania, and the [fol. 409] transmission lines thereof, known as and hereinafter called the "Conowingo Project," which license was issued to "A" and "B" jointly by the Federal Power Commission under the provisions of the Federal Water Power Act of 1920, under date of * * * 1925;

And Whereas, "A" is the owner of certain dam sites and other real property in the State of Maryland upon which will be located the proposed dam and her certain corporate rights and franchises in the State of Maryland available for use in the said "Conowingo Project";

And Whereas, "A" proposes to develop the "Initial Conowingo Project" in Maryland with certain additions, extensions or improvements thereto in the manner hereinafter described and will have when the project is completed a plant capable of producing large amounts of electric power and energy consisting in general of the following:

(a) A dam and power house near Conowingo, Maryland; the dam to be constructed with or without superimposed steel gates and to have an elevation above mean sea level, including such gates, if any, of from one hundred (100) feet to one hundred ten (110) feet, more or less; the power house to contain six hydro-electric units of approximately 50,000 horse power each, and auxiliaries together with the necessary control and switching apparatus; the substructure to include foundations for four additional such hydro-electric units. The equipment will include seven 44,000-

kilovolt ampere transformers or transformers of equivalent capacity for raising the line potential to a suitable transmission voltage;

(b) An outdoor switching station adjacent to the power house equipped with the necessary switches and lightning arresters for controlling and safeguarding the high voltage transmission lines;

(c) Two high tension transmission lines of suitable voltage on steel towers connecting the said switching station with a point on the Pennsylvania-Maryland State line east of the Susquehanna River to connect with similar lines of "B" from said point to a point at the boundary line of Lower Merion Township, Montgomery County, Pennsyl-
[fol. 410] vania, and of such size that either circuit can carry approximately 200,000 kilovolt amperes;

(d) All buildings, structures, apparatus, machinery and equipment appurtenant to the above described project, or necessary to complete and put the same into commercial operation;

(e) All lands, flowage rights and easements necessary for the creation and maintenance of a pool behind the dam up to the Pennsylvania-Maryland State line and a right-of-way of suitable width for three transmission lines (including the two transmission lines above mentioned), together with all other necessary land or easements for the location, construction and operation of the dam, power plants, transmission lines and appurtenances;

(f) Also high tension transmission lines of suitable voltage, with the proper appurtenant equipment, for transmitting electrical energy generated at the power plant (1) to such point or points in Maryland as may be required to enable "A" to deliver electrical energy in Maryland to comply fully with its charter obligations, and (2) to such point or points on the Pennsylvania-Maryland State Line as "B" may designate, to connect with a similar transmission line or lines of "B" as may be required to enable "B" to comply fully with its charter obligations in Pennsylvania; any such transmission line or lines with appurtenant equipment to constitute an addition, extension or improvement referred to in Article Fourth of this lease and

to be the basis for the payment of increased rental as therein provided.

And Whereas, "X" is incorporated under the laws of Maryland for the purpose among other things of generating, transmitting and selling electrical energy and desires, in order to carry out its corporate purposes, to avail itself of the power and energy obtainable from the "Conowingo Project" and to that end proposes to lease the said property from "A" and "A" is willing to lease the same to "X" on the terms and conditions hereinafter set forth;

And Whereas, "A" and "X" are respectively empowered under their charters and the laws of the State of Mary- [fol. 411] land to enter into and execute this contract of lease and to perform the conditions and covenants hereinafter contained, and the same has been duly approved and assented to by the Board of Directors of "A" and "X" respectively and by the holders of all the capital stock of "A" and of "X" respectively, at meetings duly called for that purpose, at which meetings the officers of "A" and of "X" respectively, were authorized and empowered to execute, acknowledge and deliver this contract of lease, and all other things necessary to make the same a valid, binding and legal lease and contract, have been done and performed and the execution, acknowledgment, delivery and performance hereof have been in all respects duly authorized;

And Whereas, "A", "B" and "X" have entered into an agreement of even date herewith with The Philadelphia Electric Company, a corporation organized and existing under the laws of the Commonwealth of Pennsylvania (hereinafter called "PX"), a copy of which agreement is attached hereto and identified as "Master Contract," and under the terms of which "A", "B", "X" and "PX" agree that they and each of them will enter into the certain agreements described in said "Master Contract", and will undertake and perform the obligations described in said "Master Contract" and in said agreements;

Now, Therefore, This Agreement Witnesseth: That, subject to the approval hereof by the Federal Power Commission, "A", its successors and assigns, for and in consideration of the rents, covenants and agreements hereinafter reserved and contained on the part and behalf of "X" to be paid, kept and performed, has granted, leased

and demised and by these presents does grant, lease and demise unto "X" for the term of years and upon the terms and conditions hereinafter stated and contained, the lands and premises described, as follows, to wit:

1. All that certain tract or parcel of land lying and being partly in Cecil County and partly in Harford County, State of Maryland, bounded and described as follows, to wit:
[fol. 412] Beginning at the point where the boundary line between the Commonwealth of Pennsylvania and the State of Maryland intersects the first one hundred thirty (130) feet elevation contour line which is continuous along the bank of the Susquehanna River to the middle thread of a stream known as Bedow's Spring Branch, and which contour lies west of the western shore of the said Susquehanna River (the said contour line and other lines and points of elevation hereinafter mentioned being elevations above mean sea level);

Thence along the said one hundred thirty (130) feet elevation contour line and following the meanders, turnings and windings thereof in a general southeasterly direction through said Harford County and State aforesaid to a point where said one hundred thirty (130) feet elevation contour line intersects the middle thread of said Bedow's Spring Branch, a stream flowing into said Susquehanna River at Shure's Landing;

Thence down said Bedow's Spring Branch and along the middle thread thereof to the point where said middle thread intersects the western shore line of said Susquehanna River; thence southerly following the western shore line of said Susquehanna River (crossing the mouth of Deer Creek) to a point in the Second Election District of Harford County where said line intersects the middle thread of a stream flowing into said Susquehanna River at or near tidewater, known as Rock Run;

Thence true north forty-five (45) degrees true east crossing said Susquehanna River and crossing the boundary line between Harford and Cecil Counties to the eastern shore line of said Susquehanna River in Cecil County;

Thence northerly following the eastern shore line of said Susquehanna River to the point where said eastern shore line intersects the middle thread of a stream flowing into the Susquehanna River called Octoraro Creek;

Thence true north to a point of intersection with the first one hundred thirty (130) feet elevation contour line which is continuous along the bank of said Susquehanna River to the boundary line between the Commonwealth [fol. 413] of Pennsylvania and the State of Maryland, and which contour line lies east of the eastern shore of the Susquehanna River;

Thence along said one hundred thirty (130) feet elevation contour line and following the meanders, turnings and windings thereof in a general northwesterly direction through Cecil County and State aforesaid to the point where said one hundred thirty (130) feet elevation contour line intersects the said boundary line between the Commonwealth of Pennsylvania and the State of Maryland aforesaid;

Thence along said boundary line in a westerly direction across the valley of the Susquehanna River to the point and place of beginning;

2. Also All That Certain tract or parcel of land lying and being in Harford County, State of Maryland, contiguous to tract described in the foregoing paragraph 1, containing approximately fifty (50) acres, being near to the proposed location of the said power house, for the possible location of the said outside switching station hereinabove referred to.

"A" warrants with respect to the lands above described, or mentioned, that it has heretofore acquired and now owns the fee simple title to portions thereof; that with respect to other portions thereof, it has heretofore acquired and now owns an easement to overflow and flood same with water; that with respect to other portions thereof it has heretofore taken from the legal owners thereof, full and complete releases for damages which may now or in the future accrue to said owners by reason of the overflowing or flooding of same by water; and that as to the remaining portion of the area above described, not included in the above classifications, "A" covenants and agrees that it will with all reasonable dispatch and promptness, and at its own cost and expense, acquire by purchase or condemnation, when and as requested by "X," either a fee simple title to so much of the same, or such easements or

other rights therein as may be deemed necessary for use in connection with said Conowingo project;

[fol. 414] Together with the dam, power plant and equipment and the transmission lines and appurtenances thereof owned by or hereafter to be acquired or constructed by "A" on said described premise as recited above in this agreement; and

Together with the benefits assured to "A" by the operation and maintenance by "B" of the pool in Pennsylvania under the provisions of an Agreement of even date herewith, known as the "Pool Agreement," above referred to, and the right to receive all moneys payable to "A" thereunder; and also all other property in the plant or the operation or use thereof which "A" may hereafter make, lease or in anywise acquire or be entitled to, including all the machinery and appliances whatsoever and of every kind and description; and all the easements and appurtenances thereunto belonging; and including all equipment, machinery, tools, appliances, supplies and other property in anywise owned, possessed or acquired by "A" and used or useful in connection with the said "Conowingo Project".

To Have and To Hold, All and singular the demised property (hereinafter referred to as "Demised Premises") unto "X," its successors and assigns, with the right to demand and receive for its and their own sole use and benefit, all the tolls, rents, dividends, earnings, profits, revenues and incomes to be derived from the said demised premises and every part thereof for the term of fifty (50) years from the date of issue of said Federal License and for the additional term of any renewals or extensions thereof (excepting and reserving, however, unto "A" the use of so much of the demised premises as may be required by "A" to enable "A" to comply fully with such of its charter obligations as "X" may not be able to perform), "X" as such lessee yielding and paying unto "A" as lessor, its successors and assigns, at such place as hereafter the lessor, its successors or assigns, shall designate by written notice to the lessee, a minimum money rental of four million thirty thousand dollars ($4,030,000) per annum, subject, however, to increase, in accordance with the following basis of calculation and the covenants and conditions hereinafter contained, and subject also to such changes in amount or in basis of calculation of said rental, or of any part

[fol. 415] thereof, as may be ordered from time to time by the Public Service Commission of Maryland, the Public Service Commission of the Commonwealth of Pennsylvania, the Federal Power Commission, or of any of their successors, within the respective powers and jurisdictions of each as determined by the Constitution and laws of the State of Maryland, of the Commonwealth of Pennsylvania, and of the United States, respectively. Unless and until so changed, said rental shall be payable as follows:

Except as hereinafter provided, the minimum payment in any quarter year required under paragraph- I and II above, shall be one million seven thousand five hundred dollars ($1,007,500), and in any event not less than four million thirty thousand dollars ($4,030,000) in any one calendar year. Except as hereinafter provided, lessee covenants and agrees to pay said minimum sums, whether the energy can be delivered or not.

And This Agreement Further Witnesseth, That "A" and "X" in consideration of the premises do hereby mutually covenant and agree as follows, each binding itself, its successors and assigns, to the other, its successors and assigns:

First. "X," the lessee hereunder, leases and hires the premises demised by this lease for the term of years and at the rent aforesaid and upon all the terms and conditions hereinbefore or hereinafter stated or set forth, and in consideration of the leasing and demising to it of the premises hereinabove described, does hereby, for itself, its successors and assigns, covenant, undertake and agree to and with "A," its successors and assigns, fully and faithfully to keep, perform and observe each and every covenant, undertaking, agreement, obligation and condition herein contained on the part and behalf of its *a* lessee to be kept, performed and observed.

Second. It is understood and agreed that "X" has, of even date herewith, entered into a contract with "PX," a copy of which contract is attached hereto and identified as "Operating Agreement" whereby "X" agrees to deliver and "PX" agrees to receive electric power from the power plant of "A" hereinbefore described, at the point

[fol. 416] where transmission lines of "A" intersect the Pennsylvania-Maryland State boundary line, and whereby "PX" has assumed the financial obligations of "X" to "A" hereunder; and that "PX" has agreed to guarantee to "A" the performance of said obligations of "X" hereunder by entering into the "Guaranty Agreement" with "A," a copy of which is attached hereto.

Fifth. During the term hereby demised, and any renewals thereof, "X" shall and will, in addition to the payments hereinbefore provided to be made to "A", its successors and assigns, well and truly pay or cause to be paid all other sums hereinafter specified, which sums shall be in all respects treated as additional rental reserved hereunder. All such payments shall be made at the times and in the manner in this agreement of lease fixed and presribed, without any deduction or abatement therefrom for any reason whatsoever.

Sixth. During the continuance of this lease, or any renewal thereof, "X" shall and will assume the payment of and faithfully and punctually pay, satisfy and discharge all taxes, rates, charges, fees, licenses and assessments, general and special, ordinary and extraordinary, of every nature and description, which have been or may be lawfully imposed or assessed in any way upon "A," or for which "A" would otherwise in any wise be liable or chargeable, on account of its corporate existence, or its franchises, property, real or personal, earnings, bonds, capital stock, dividends or profits, including the rentals payable hereunder, except to the extent that such taxes, rates, charges, fees, licenses and assessments arise out of the ownership, operation or control by "A" of properties other than the "Conowingo Project" as initially constructed or as extended as herein provided for. All such payments shall be made by "X" as the same become due to the proper authorities by law to receive the same; and in the event that "X" shall fail to make any such payment when the same becomes due, "A" may at any time thereafter, without waiving any other right or remedy hereunder or otherwise, make any such payment and recover from "X" the amount thereof with interest thereon from the date of such payment, and all costs, attorney's

fees and other expenses. Provided, however, that if "X" shall bona fide desire to resist by legal proceedings the [fol. 417] payment of any taxes or assessments, and shall so notify "A," "A" shall not, nor shall "X" be obliged to pay any such taxes or assessments until thirty days after the final adjudication thereon by the court having jurisdiction in such cases, unless thereby the security of the demised premises might be affected.

Ninth. "A" hereby gives and grants unto "X" for the term hereof, full power and authority to collect and receive for the absolute use of "X" all the rents, revenues and income issuing out of or pertaining to the property hereby demised.

Tenth. "X" hereby agrees to accept the plant, estates and property hereby demised upon delivery of possession thereof by "A" as hereinbefore provided, and shall thereafter during the continuance of this lease, in good faith and to the best of its ability, operate at its own risk and expense the power plant and property demised under this agreement. "X" shall furnish all plant, apparatus and equipment required in substitution therefor, which may be necessary or proper to such operation, and will carry on, preserve and promote the interest and preserve any franchises vested in "A." "X" shall further save "A" harmless from the payment of any debt or liability arising hereunder, or from any fault or neglect of "X" or its agents or employes or the violation of any law or ordinance now existing or hereafter lawfully passed, and (except as in this agreement provided) "X" assuming the same duties, obligations and liabilities in respect of the demised premises and maintaining and operating the same as if "X" by succession had become the corporate owner thereof.

Eleventh. "X" during the said term shall maintain and keep the demised premises in good order, repair and condition, and in a state of efficiency and first-class operating condition, and shall replace and renew any property which becomes unfit and will bear and defray the cost thereof as additional rental payable by it under this indenture.

Eighteenth. "X" shall cause the property from time to time subject to this lease to be insured at the expense of "X" against loss or damage by fire, tornado or other casualty, to the extent that similar property is usually insured, in good and solvent companies, such insurance to be taken [fol. 418] in the names of "A" and "X" as their interests may appear and to contain the usual mortgagee clause making losses payable to the trustee under any mortgage of such insured property as its interests may appear, if and as required by the provisions of any such mortgage. The proceeds of any insurance shall be applied as set forth in the mortgage referred to in Article Twenty-seventh hereof as long as said mortgage shall remain in effect and/or as may be required from time to time by the provisions of any other mortgage upon property so insured. In the event that no insurance provisions contained in any mortgage shall govern the application of such proceeds or any part thereof, the same shall be applied by "X" either (a) to the rebuilding, replacement or repair of the property damaged or destroyed, or (b) to pay for permanent additions, extensions or betterments to the leased property, or (c) to the payment and discharge by redemption or otherwise of bonds secured by mortgage on the leased property; as may be determined from time to time by "X." Should the rebuilding, replacement or repair of any property so damaged or destroyed be necessary or desirable for the maintenance and operation of the leased property or to assure its sufficiency as a whole for the transaction of "A's" corporate business, "X" covenants and agrees to rebuild, replace or repair the same and to furnish the necessary funds therefor should the proceeds of insurance be insufficient or be applied by it to other purposes. "A" agrees that it will make, execute and deliver to the trustee under any such mortgage all requests, certificates and other documents which may be required in order to obtain such application of the proceeds of insurance as may be requested by "X" and as may be permitted by the provisions of this Article and of any such mortgage. In case of any failure on the part of "X" to keep said property insured or to perform any of its remaining covenants contained in this Article, "A"

shall have the right to take all necessary action for that purpose, with the right to enter upon the leased property, and shall be entitled to recover from "X" the amount of any expenditures properly made by it for that purpose, with interest thereon from the date of payment, without prejudice to any other right or remedy secured to "A" by this lease for breach of any covenant thereof or otherwise.

[fol. 419] Twentieth. "X" shall pay to "A" a sum equal to such depreciation charges against the demised property as are or may be required by the Federal Power Commission or other duly authorized public body, and such payments shall be held by "A" as may be so required, and as may be required by the provisions of any mortgage upon the demised property, and shall be treated as additional rental reserved hereunder, "X" so long as not in default hereunder, shall have the right to withdraw from said funds from time to time upon proper vouchers to reimburse it for the cost of replacements or renewals of plant or equipment (other than ordinary repairs or those provided for by fire or tornado insurance) any sums available from accumulations of payments for depreciation above required to be paid.

In witness whereof the parties hereto have hereunto set their respective corporate seals and caused these presents to be signed by their respective Presidents or Vice-Presidents and attested by their respective Secretaries or Assistant Secretaries as of the date hereof.

Abstract of County Exhibit No. 3 (Continued)

Operating Agreement

Agreement Between The Susquehanna Electric Company and The Philadelphia Electric Company

Relating to the Conowingo Project

Modified by Agreement Feb. 1, 1926

Dated —— —, 1925.

This Agreement, made the — day of ——, A. D. 1925, by and between The Susquehanna Electric Company, a corpo-

[fol. 420] ration organized and existing under the laws of the State of Maryland (hereinafter called "X"), and the Philadelphia Electric Company, a corporation organized and existing under the laws of the Commonwealth of Pennsylvania (hereinafter called "PX"). Witnesseth:

Whereas, "X" is incorporated under the laws of Maryland for the purpose among other things of generating, transmitting and selling electrical energy;

And whereas, "X" in order to carry out its corporate purposes, has leased by agreement of lease of even date herewith, a copy of which is attached hereto and identified as "Lease of Maryland Properties," certain of the property and rights of The Susquehanna Power Company, a corporation organized and existing under the laws of the State of Maryland (hereinafter called "A") for the term of fifty (50) years from the date of issue of the Federal License, and for the additional term of any renewals or extensions thereof, issued jointly to "A" and Philadelphia Electric Power Company (formerly called "Susquehanna Water Power Company"), a corporation organized and existing under the laws of Pennsylvania (hereinafter called "B"), by the Federal Power Commission under the provisions of the Federal Water Power Act of 1920, under date of —— —, 1925, authorizing said holders to construct and operate a hydro-electric development on the Susquehanna River in Maryland and Pennsylvania and the transmission lines thereof known as and hereinafter called the "Conowingo Project";

And whereas, "B" has entered into an agreement with "A" of even date herewith, a copy of which is attached hereto and identified as "Pool Agreement" under the terms of which "A" will be assured the benefit of the maintenance and operation by "B" of said pool in Pennsylvania, for the term of fifty (50) years from the date of issue of said Federal License hereinbefore referred to and for the additional term of any renewals or extensions thereof, so that upon completion of the development in Maryland "A" will own or control a complete hydro-electric power plant with the pool to be used in connection therewith;

[fol. 421] And whereas, "A" proposes to develop the "Conowingo Project" in Maryland in the manner described in the "Lease of Maryland Properties," and will have when the project is completed a plant capable of producing large amounts of electric power and energy;

And whereas, "PX" is advised that the most permanent and economical source for the supply to it of electrical energy for use by it in performing its services to the public and for supplementing the supply of electricity from its own steam power stations will be from the water power to be developed by said "Conowingo Project";

And whereas, "X" can dispose of the output of electrical energy of the "Conowingo Project" to advantage only to an electric company with such large reserves of steam power plant capacity as to enable it to supply the electrical energy requirements of its customers with electrical energy generated by steam when the flow of the Susquehanna River is low; and "PX" is the only available corporation with such reserves and with the ability to so care for the electrical energy requirements of its customers;

Now, therefore, in consideration of the premises and other good and valuable considerations, and subject to the approval hereof by the Public Service Commission of Maryland, the Public Service Commission of the Commonwealth of Pennsylvania; and/or the Federal Power Commission, within the respective powers and jurisdictions of said Commissions, as determined by the Constitution and Laws of the State of Maryland, the Commonwealth of Pennsylvania, and the United States respectively.

1. "X" agrees that it will so operate the property leased by it from "A" by said "Lease of Maryland Properties" as to deliver to said high tension transmission lines leased by "PX" by "Lease of Pennsylvania Transmission Lines to Lower Merion Township," at the point or points of connection of said transmission lines with similar transmission lines of "A", the maximum amount of hydro-electric energy consistent with the capacity of the hydro-electric plant and the transmission lines of "A" so leased by "X" from "A" [fol. 422] and with the flow of the Susquehanna River, subject to all requirements of "A" and "X" for distribution in Maryland to comply fully with their charter obligations and the requirements of "B" for distribution in Pennsyl-

vania to purchasers and consumers other than "PX" to comply fully with "B's" charter obligations; it being the intention of this agreement that "X" shall operate "A's" plant and transmission lines so as to provide the maximum lawful cooperation to "PX" in supplying its electrical energy requirements.

2. In consideration of the agreement by "X" to deliver electrical energy to "PX" as aforesaid, "PX" agrees to assume and discharge any and all of the financial obligations of "X" to "A" arising under said "Lease of Maryland Properties," including specifically the covenant to pay rent and the covenant to pay for the cost of operating and maintaining the property of "A".

3. During the continuance of this agreement "PX" shall and will assume the payment of and faithfully and punctually pay, satisfy and discharge all taxes, rates, charges, fees, licenses and assessments, general and special, ordinary and extraordinary, of every nature and description, which have been or may be lawfully imposed or assessed in any way upon "X" or for which "X" would otherwise in anywise be liable or chargeable, on account of its corporate existence, or its franchises, property, real or personal, earnings, bonds, capital stock, dividends or profits, including the charges payable hereunder, except to the extent that such taxes, rates, charges, fees, licenses and assessments arise out of the ownership, operation or control by "X" of properties other than the "Conowingo Project" as initially constructed or as extended as in said leases provided for. All such payments shall be made by "PX" as the same become due to the proper authorities entitled by law to receive the same; and in the event that "PX" shall fail to make any such payment when the same become due, "X" may at any time thereafter, without waiving any other right or remedy hereunder or otherwise, make any such payment and recover from "PX" the amount thereof with interest thereon from the date of such payment, and all costs, attorney's fees and other expenses. Provided, however, that if "PX" shall bona fide desire to resist by legal proceedings the pay-
[fol. 423] ment of any taxes or assessments, and shall so notify "X", "X" shall not, nor shall "PX" be obliged to, pay any such taxes or assessments until thirty days after the final adjudication thereon by the Court having jurisdic-

tion in such cases, unless thereby the security of "X's" property might be affected.

4. It is understood and agreed that payments to "X" in reimbursement for operating and maintenance expenses incurred hereunder shall be paid by "PX" monthly on or before the 25th day of the month following the period for which such payment is made. "PX" shall at all times have access to the accounts, account books and other corporate records of "X" to the end that the operating expenses of "X" hereunder shall be subject to the approval of and audit by "PX."

Payments of rent under said "Lease of Maryland Properties" shall be made by "PX" to "A" quarterly on or before the 25th day of the month following the period for which such payment is made.

5. All gross revenue accruing to "X" from sales other than to "PX" shall be credited on account of operation and maintenance expenses payable by "PX" to "X" under this agreement, and any excess moneys shall be paid on account of rentals due by "X" to "A" and credited to "PX" on account of its liability for such rentals.

In witness whereof said parties have caused their common or corporate seals to be affixed hereto, duly attested by their proper officers as of the day and year aforesaid.

[fol. 424] Abstract of County Exhibit No. 3 (Continued)

Guaranty Agreement

Agreement Between The Philadelphia Electric Company and The Susquehanna Power Company

Relating to the Conowingo Project

Modified by Agreement February 1, 1926

Dated ——, 1925.

This Agreement, dated the — day of ——, A. D. 1925, between the Philadelphia Electric Company, a corporation of the State of Pennsylvania (hereinafter called "PX"), party of the first part, and The Susquehanna Power Com-

pany, a corporation of the State of Maryland (hereinafter called "A"), party of the second part, Witnesseth That:

Whereas, "A" is a corporation organized for the purpose, inter alia, of constructing, operating and maintaining a dam and power plant for the generation, transmission and sale of electrical energy from the waters of the Susquehanna River, having its principal office in the town of Bel Air, Maryland;

And whereas, "A" in conjunction with Philadelphia Electric Power Company (formerly called "Susquehanna Water Power Company"), a corporation of the State of Pennsylvania (hereinafter called "B") is the holder of a Federal license to construct a hydro-electric power development on the Susquehanna River in Maryland and Pennsylvania, and the transmission lines thereof, known as and hereinafter called the "Conowingo Project," which license [fol. 425] was issued to "A" and "B" jointly by the Federal Power Commission under the provisions of the Federal Water Power Act of 1920, under date of 1925;

And Whereas, "A" is the owner of certain dam sites and other real property in the State of Maryland upon which the proposed dam will be located and has certain corporate rights and franchises in the State of Maryland (hereinafter referred to as the "Maryland Properties") available for use in the said "Conowingo Project";

And Whereas, "A" has entered into a certain agreement of even date herewith relating to said "Conowingo Project," leasing to the Susquehanna Electric Company, a corporation also of the State of Maryland (hereinafter called "X"), said "Maryland Properties," a copy of said agreement being attached hereto and identified as "Lease of Maryland Properties";

And Whereas, "PX" is the owner of all the capital stock of "X" and has entered into an agreement with "X," under the terms of which "X" has agreed to deliver to "PX," or its successors and assigns, electrical energy produced by "X" as lessee of "A," a copy of which agreement is attached hereto and identified as "Operating Agreement";

And Whereas, It is provided in said "Lease of Maryland Properties" and in said "Operating Agreement" that "PX" shall guarantee to "A" the performance of the obligation of "X" to "A" under said "Lease of Maryland

Properties" and "A" has entered into said "Lease of Maryland Properties" in reliance, inter alia, upon the assurance and agreement of "PX" that it would execute this "Guaranty Agreement," without which assurance and agreement "A" would not have entered into said "Lease of Maryland Properties";

And Whereas, "PX" is empowered under its charter and the laws of Pennsylvania to enter into and execute this "Guaranty Agreement" and to perform the conditions and covenants hereinafter contained, and all things necessary to make the same a valid, binding and legal contract have been done and performed, and the execution and performance hereof have been in all respects duly authorized;

[fol. 426] It Is Therefore Hereby Agreed, By and between the aforesaid parties, as follows, subject to the approval hereof by the Public Service Commission of Maryland, the Public Service Commission of the Commonwealth of Pennsylvania, and/or the Federal Power Commission, within the respective powers and jurisdictions of said commissions, as determined by the Constitution and laws of the State of Maryland, the Commonwealth of Pennsylvania and the United States, respectively.

1. That in consideration of the premises "PX" hereby guarantees to "A" the faithful performance of "X" of any and all of the obligations of and undertakings by "X" to "A," contained in said "Lease of Maryland Properties."

2. In the event that "X" shall default in the prompt payment when due of any sum of money, or in the faithful performance of any covenant, term or condition in said "Lease of Maryland Properties" contained, "PX" agrees that then and in that event "PX" itself will make or cause to be made such payment or payments and will perform or cause to be performed any such covenant, term or condition forthwith.

In witness whereof the parties hereto have hereunto set their respective seals and caused these presents to be signed by their respective secretaries or assistant secretaries as of the day and year aforesaid.

MATERIAL ABSTRACT OF LEASE OF MARYLAND PROPERTIES

This Agreement of Lease, Dated this 1st day of February, A. D. 1926, by and between The Susquehanna Power

Company, a corporation organized and existing under the Laws of the State of Maryland (hereinafter called "A"), Lessor, and the Susquehanna Electric Company, a corporation also organized and existing under the Laws of the State of Maryland (hereinafter called "X"), Lessee.

[fol. 427] Witnesseth, After recitals to the effect that the Power Company is organized to construct, operate and maintain a dam and hydro-electric power plant on the Susquehanna River in Maryland, and in conjunction with Philadelphia Electric Power Company, formerly called Susquehanna Water Power Company, a corporation of Pennsylvania, is the holder of a Federal license to construct such development on the Susquehanna River in Maryland and Pennsylvania, and the transmission lines thereof, and that The Susquehanna Power Company is the owner of certain dam sites and other real property in Maryland, and the Philadelphia Electric Power Company is the owner of certain real property and rights in Pennsylvania available for the construction of a dam above the dam site of said Susquehanna Power Company, and after various other recitals in reference to a pool agreement and the elevation of the dam, switching station, transmission lines, etc., The Susquehanna Power Company leases, subject to the approval of the Federal Power Commission, to the Susquehanna Electric Company, a parcel of land in Cecil and Harford County, Maryland, bounded by courses and distances, and also several other strips and parcels in Maryland.

Together With the dam, power plant and equipment and transmission lines owned or hereafter acquired or constructed by the said Susquehanna Power Company on said premises, etc.

To Have and to Hold all and singular the said demised premises to the said Susquehanna Electric Company, its successors and assigns, and the tolls, rents, dividends, earnings and profits and income for the term of fifty (50) years from the date of issue of said Federal license, excepting and reserving unto The Susquehanna Power Company the use of so much of the demised premises as may be required by it to enable it to comply fully with such of its charter obligations as the lessee may not be able to perform; the said Susquehanna Electric Company paying unto the said Sus-

quehanna Power Company an annual rent in quarterly installments;

"The rental payment for any quarter shall be one-fourth (¼) of an amount equal to seven (7) per cent of the actual legitimate investment made by "A" (The Susquehanna [fol. 428] Power Company) in the Conowingo project, as at the end of said quarter year. In determining the rental payments for any quarter year the term "actual legitimate investment" shall be construed to mean the sum total of:

"(1) The actual legitimate investment as defined and interpreted in the Federal Water Power Act and in the rules and regulations of the Federal Power Commission issued under date of June 6, 1921, make in the project from the date of the Federal license, and

"(2) The actual legitimate investment in the project up to the date of the license to be issued by the Federal Power Commission as determined in accordance with the provisions of said license.

"Said rental shall commence when the first hydro-electric unit and transmission equipment of the said "Initial Conowingo Project" are ready to deliver power to 'B's' Pennsylvania transmission lines to Lower Merion Township at the Pennsylvania-Maryland State boundary line and said transmission lines are ready to transmit the power, and shall be one-seventh of the aforesaid rental with an increase of an additional one-seventh of such rental as each additional one-seventh of the total of approximately 300,000 horse-power is ready for delivery as aforesaid.

"In case the dates upon which the aforesaid rental payments come into effect hereunder do not coincide with the beginning of the calendar year or of a quarter of such year, then such rental shall be prorated for the respective periods during which such changes first come into effect.

"The rental hereinabove specified shall be subject to such changes in amount or in basis of calculation of said rental, or any part thereof, as may be ordered from time to time by the Public Service Commission of Maryland, the Public Service Commission of the Commonwealth of Pennsylvania, the Federal Power Commission, or of any of their successors, within the respective powers and jurisdictions of each as determined by the Constitution and laws

of the State of Maryland, of the Commonwealth of Pennsylvania, and of the United States, respectively.

[fol. 429] "All sums payable to 'A' as rental hereunder whether hereinbefore or hereafter specified shall be paid in gold coin of the United States of America of or equal to the present standard of weight and finances.

"If in any proceeding instituted or prosecuted by the Public Service Commission of Maryland, the Public Service Commission of the Commonwealth of Pennsylvania, the Federal Power Commission, or any of their successors, respecting the rates to be charged or respecting the rights granted or obligations assumed by any of the parties to the several agreements described in the aforesaid 'Master Contract' or respecting any other matter within the respective powers and jurisdictions of said commissions, the amount, or the conditions of payment, or the basis of computation of the rental payable hereunder, or of any part thereof, shall by appropriate order within the respective powers and jurisdictions of said commissions or any of their successors, as determined by the Constitution and laws of the State of Maryland, the Commonwealth of Pennsylvania and the United States, respectively, be so changed as to increase or decrease the rental otherwise payable hereunder the obligations of 'X' to 'A' hereunder shall be increased or decreased in like degree."

Then follow various covenants on the part of the said lessor and lessee.

Duly executed by the lessor and the lessee, and acknowledged by both the lessor and lessee.

[fol. 430] EXHIBIT No. 4 OF THE COUNTY COMMISSIONERS OF HARFORD COUNTY

(Filed with the State Tax Commission of the State of Maryland on June 8th, 1929)

BEFORE THE PUBLIC SERVICE COMMISSION OF MARYLAND
CASE No. 2329

In the Matter of THE SUSQUEHANNA POWER COMPANY and THE SUSQUEHANNA ELECTRIC COMPANY Application to Permit the Susquehanna Electric Company to Issue Its Capital Stock and to Exercise Its Franchises; to Approve a Plan and Intercorporate Arrangements for Financing the Project of the Susquehanna Power Company under Its Charters, and to Exercise and Enjoy All Rights and Privileges Granted to it and the Susquehanna Water Power Company, a Corporation of Pennsylvania, under Joint Application for License from the Federal Power Commission in Respect of What is Known as the "Conowingo Project."

Public Service Commission of Maryland

Opinion—Filed January 13th, 1926

By the COMMISSION:

The applicants in this case seek the approval of the Public Service Commission of Mayland to certain financial and corporate proposals which are essential to the consummation of the present plans for a hydro-electric development on the Susquehanna River, commonly referred to in the proceedings as the "Conowingo Project".

While the plans contemplate the erection of a dam which will be located entirely within the State of Maryland, the pool created thereby will lie partly in Maryland and partly in Pennsylvania. High tension transmission lines also will be built in Pennsylvania to carry electrical energy de- [fol. 431] veloped at the hydro-electric power plant to be located at the dam. The approval of the Public Service Commission of the Commonwealth of Pennsylvania, therefore, becomes necessary with respect to certain of the pro-

posals for the project, and appropriate applications have been made to and heard by that Commission.

As the Susquehanna River is classified as a navigable waterway, the jurisdiction of the Federal Commission is invoked under the Federal Water Power Act, and the required application for a license has been made to the Federal Power Commission, a preliminary permit for the project having been granted by that body.

The Susquehanna Power Company (called "A" Company) is a corporation organized under Chapter 268 of the Acts of the General Assembly of Maryland, Session of 1908. It has heretofore been before this Commission in various proceedings. This company will be the owner of the same site and other real property in the State of Maryland upon which the dam and power will be constructed. It will also own the transmission lines in the State of Maryland leading from the power house.

The Susquehanna Electric Company (called "X" Company) likewise is a Maryland corporation and is before this Commission for the first time in these proceedings. It specifically asks the Commission to permit and approve the exercise of the franchises granted to it by its certificate of incorporation, and to authorize it to issue one thousand shares of its capital stock without par value and to sell the same to the Philadelphia Electric Company, a Pennsylvania corporation (called "PX" Company) at a price of not less than ten dollars per share. The Susquehanna Electric Company will lease from The Susquehanna Power Company its property and will operate the property in Maryland.

Philadelphia Electric Power Company (formerly called Susquehanna Water Power Company), (called "B" Company) is a Pennsylvania corporation and will own the real estate and other rights in the State of Pennsylvania required for the portion of the pool in Pennsylvania, and also certain transmission lines in that State.

[fol. 432] The Philadelphia Electric Company wil purchase electrical energy at the Maryland-Pennsylvania State line and will transmit the same, over lines leased by it from Philadelphia Electric Power Company, to the west boundary of Lower Merion Township, at which point such lines will connect with its present system. In order to take the

Conowingo Energy from Lower Merion Township to its stations the Philadelphia Electric Company will have to make an investment of approximately $11,193,000.

Intercorporate and Financial Set Up

The intercorporate and financial proposals as they stood at the conclusion of the hearings in Maryland and Pennsylvania were so clearly and succinctly set forth in a report of the Public Service Commission of Pennsylvania that this Commission is taking the liberty of incorporating certain portions thereof herein. As hereinafter shown, certain changes in the plans have been made subsequent to the issuance of this report. The report of the Pennsylvania Commission issued prior to changes in the plans, sets forth that:

"'A' and 'B' Companies propose to execute a joint and several first mortgage to a trust company securing bonds to a total authorized amount of $60,000,000. The first series of $38,000,000 principal amount will be used by 'B' Company and guaranteed by 'A'. The reserve bonds authorized by the mortgage may be used for future additions to the project. All the shares of the capital stock of 'A' will be issued to and owned by 'B' and will be pledged with the trust company as trustee under the mortgage.

"An agreement is contemplated between 'B' and 'A' which provides that 'B' at its own cost shall construct all retaining walls, dykes, banks and other appurtenances necessary for the pool in Pennsylvania, obtaining the necessary land in fee simple, or easements to overflow, or release of damage by reason of overflow.

"For the term of 50 years from the date of issue of the Federal License and for the additional term of any renewal [fol. 433] or extension thereof, 'B' guarantees that 'A' shall receive the exclusive and full benefit of the pool in connection with the Conowingo Project. 'B' is to receive at the State boundary, by means of the two transmission lines above mentioned, the electricity produced by the hydro-electric plant needed to fulfill its charter obligations, including supplying the public in the territory surrounding the pool covered by 'B's' charter, paying therefor upon substantially the same basis that the Philadelphia Electric Company will pay for its electricity.

"As consideration for the use of the pool, 'A' agrees to pay 'B' $275,000 per annum beginning with the first quarter after completion of the first power unit of the Conowingo Project. 'A' also agrees to pay all operating expenses and cost of maintaining the property in first-class operating condition, as well as depreciation charges required by the Federal Power Commission or other duly authorized public body, and all taxes payable by 'B,' assessed against it on account of the property, the subject-matter of the agreement.

" 'B' agrees, however, that the undertaking of 'PX' (the Philadelphia Electric Company) to faithfully perform the covenants to be performed by 'PX' under the lease of the transmission line, hereinafter referred to, shall constitute a full and complete discharge of 'A's' financial obligation to 'B' under the said agreement.

" 'A' Company will lease to 'X' Company the Maryland real estate, including the area covered by the Maryland part of the pool, the dam, power plant, machinery, equipment and appurtenances and the transmission line to the Pennsylvania-Maryland boundary, together with 'A's' rights under the A-B Company agreement for the duration of the Federal License, including any renewal or extension. The lessee agrees to pay to 'A' a minimum rent of $4,030,000 per annum, of which a sum called the 'Standbycharge' amounting to $1,692,000 is fixed, and the balance called the 'energy compone-t' is subject to increase according to the amount of electrical energy delivered. * * * The total minimum rent commences only upon completion of the project, including all its hydro-electric units and the trans- [fol. 434] mission project lines to the State border. The lessee also agrees to pay all taxes of every kind that may be imposed upon the lessor, to maintain the property at its own expense, to insure at its own expense, and to pay to the lessor, to be held in a separate fund, a sum equal to depreciation charges required by the Federal Power Commission or other duly authorized public body, with a right to withdraw from this fund expenditures for replacements and renewals of plant and equipment.

"The Philadelphia Electric Company will be the owner of all the capital stock of 'X' Company, the lessee, 'B' Company being the owner of all the capital stock of 'A,' the lessor, as previously mentioned.

"'B' (Philadelphia Electric Power Company) which will construct the high power transmission line from the State border to the border of Lower Merion Township, agrees to lease to the Philadelphia Electric Company the strip of land with the transmission lines and equipment to be erected thereon, for the term of the Federal License and any renewal or extension subject to the right of 'B' to transmit over said line any electricity needed to enable it to fulfill its charter obligations. The annual rental is a minimum of $550,000 of which $231,000, called the 'Standby' charge is fixed, and the balance, called the 'energy compone-t' is subject to increase according to the amount of electrical energy delivered. * * * The full minimum rent becomes effective only upon completion of the project, including the six hydro-electric units and the transmission lines.

"In addition 'PX' (The Philadelphia Electric Company) agrees to assume and perform all the obligations of 'B' to 'A' under the provisions of the pool agreement to maintain the portion of the pool in Pennsylvania, but not the obligations of 'B' to construct its works and provide the necessary property; in consideration of which 'B' accepts the rent paid by 'PX' in full discharge of the payments agreed to be made by 'A' to 'B' under the pool agreement.

"'PX' also assumes payment of all taxes, charges and assessments, of every nature and description imposed in [fol. 435] any way upon 'B' or its franchises and property, except such as may arise out of the operation or control of properties other than the Conowingo Project. The lessee agrees to maintain the property at its own expense, to insure at its own expense, and to pay as additional rental, into a separate fund, an amount equal to depreciation charges required by the Federal Power Commission or other duly authorized public body, with a right to withdraw from such fund expenditures for replacements and renewals. The lease is junior to the mortgage.

"All of the capital stock of 'B' will be underwritten or purchased by The Philadelphia Electric Company.

"'X' agrees under the terms of an operating agreement to operate the leased Maryland properties so as to deliver to 'PX' at the State boundary, on the transmission line leased by 'PX' from 'B' the maximum hydro-electric energy consistent with the capacity of its plant and the energy re-

quirements of the market in Maryland local to the power plant, and the requirements of 'B' to fulfill its charter obligations. 'PX' agrees to assume and discharge all obligations of 'X' to 'A' under the lease of the Maryland properties, including rent and the cost of operating and maintaining 'A's' property, and to assume payment of all taxes, charges and assessments of every kind and nature imposed upon 'X.' The revenue from sales, other that to 'PX' is to be credited on account of operating and maintenance expenses.

"'PX' guarantees to 'A' the faithful performance by 'X' of all obligations and undertakings by 'X' to 'A' contained in lease of Maryland properties, and if 'X' defaults in the prompt payment and faithful performance, 'PX' agrees to make the payment and to perform or cause to be performed any such undertakings.

"'A' and 'B' agree to join in executing the first mortgage to the Trust Company to secure bonds limited to $60,000,000 principal amount, of which the first series of $38,000,000 is to be issued on account of the cost of the initial Conowingo Project. 'A' agrees to pay 'B' such proportion of the principal and interest and other payments assumed under the bonds and mortgage as the amount of [fol. 436] the bond proceeds received by 'A' bears to the total proceeds of the bonds.

"'B' agrees to advance to 'A' out of the proceeds of the sales of stock the additional funds necessary to complete the Maryland portion of the Initial Conowingo Project, above the amount of the proceeds from the bonds expended on the Maryland properties. Upon completion of the project 'A' is to deliver to 'B' shares of its capital stock in full payment of such advances with interest thereon, and 'A' agrees not to issue any shares of stock to anyone else, without 'B's' consent.

"The proceeds of the sale both of the bonds and of the stock of 'B' are to be deposited with the Trust Company, Trustee, under the mortgage, for withdrawal only to meet the cost of the project. The stock of 'A' delivered to 'B' is to be pledged with the Trust Company as Trustee under the mortgage.

"'B' and 'PX' mutually agree that for completion of the initial project $38,000,000 first mortgage bonds on the property of 'B' and 'A' shall be sold.

"'PX' agrees to purchase or underwrite at par 578,200 shares of non-voting first preferred stock of 'B,' par $25, callable at $28, with cumulative dividends at $2 per annum. To the extent that the proceeds of the sale of the bonds and first preferred stock are insufficient 'PX' also agrees to purchase at par non-voting second preferred stock of 'B' par $25, convertible under certain limitations, into first preferred stock, entitled to cumulative dividends at the rate of $2 per annum.

"In consideration of the services to the enterprise to be performed by 'PX,' it shall receive 578,200 shares of no par value Class A non-voting common stock of 'B,' and also one chare of Class B voting common stock of 'B' for each share of second preferred stock of 'B' purchased by 'PX.'

"If upon completion of the initial project the first mortgage bonds sold exceed in principal amount 75% of the cost of the initial project 'PX' agrees to purchase additional second preferred stock on the same terms, sufficient to put 'B' in funds to all enough bonds to reduce the principal amount outstanding to not exceed 75% of the cost.

[fol. 437] "The proceeds of the sale of the bonds and stocks of 'B' are to be deposited with a trust company as security for payment of the bonds and withdrawn from time to time to meet the cost of the project."

Changes in Original Plan

At a conference of the Pennsylvania and Maryland commissions and Executive Secretary Merrill of the Federal Power Commission, following the last hearing before the Pennsylvania Commission, certain changes in the financial set-up were deemed advisable in order to more fully protect the users of Conogingo energy. These changes were stated in a report adopted by the Pennsylvania Commission on December 1, 1925, and were accepted by the promoters of the enterprise on December 8, 1925.

These changes, briefly, are as follows:

(1) Instead of a minimum payment to be made by the Philadelphia Electric Company, above expenses of operation, maintenance and depreciation of $4,580,000 per annum, there is substituted a provision for the payment of a 7 per cent return on the actual legitimate investment in the portion of the project covered by the "Lease of Maryland Properties" and lease by Pennsylvania transmission lines.

(2) The elimination of Class A common stock of "B" company, with the provision that "B" company shall not dispose of the stock of "A" company, all of which it will own, nor shall "PX" company dispose of the stock of "X" company, or the common stock of "B" company, all of which it shall own, without the consent of the Pennsylvania Commission and the Federal Power Commission.

(3) That the dividend rate of the preferred stock of "B" company shall not exceed 8 per cent on its par value.

(4) That the books, records and property of companies "A" and "X" shall at all times be open to the Pennsylvania Commission.

These changes in the original plan also have been submitted to the Maryland commissions and have been accepted.

[fol. 438] Estimate of Cost

The applicant's estimate of the cost of the project, $52,220,000, exclusive of the $11,193,000 investment which the Philadelphia Electric Company will have to make in order to take the current from Lower Merion Township to its stations, is made up as follows:

Dam, reservoir, power station and equipment and high tension substation and highway		$22,788,050
Engineering	$450,000	
Services of construction engineer	1,451,500	
Offices at work	547,000	
Inspection and expediting	110,400	
Temporary construction	1,250,000	
Insurance	505,000	
Commissary	406,500	
Depreciation on construction equipment	910,000	
Total engineering, etc., overheads applicable to dam, reservoir, power station and equipment and high tension substation	$5,630,400	

Highway approaches	59,600	354,400
Transmission system	345,000	2,245,000
Interest during construction	5,870,000	
Taxes and fees during construction	406,000	
Preliminary engineering, legal and administrative expenses	724,000	
Water rights and lands		3,950,000
Drexel & Company fee	1,170,000	
Railroad relocation		5,000,000
Total overheads, excluding contingencies	$14,205,000	
Contingencies	3,677,550	
Total structural cost		34,337,450
Total overheads and contingencies		17,882,550
Grand total		$52,220,000

[fol. 439] Charted Obligation to Maryland

In every conceivable manner, the obligation of the companies in the corporate set-up to supply Maryland with current to the extent of The Susquehanna Power Company's charter requirements is recognized and provided for. These requirements are as follows:

"The said Susquehanna Power Company, its successors and assigns be and they are hereby authorized and empowered to locate and build in, along or across said river and the beds and shores thereof * * * any dam or dams * * * together with all necessary power plants and works * * *, and to such ends acquire all necessary property of every kind and description * * * and to thereby develop and utilize the whole or any part of the water power of said river and apply the same by any lawful means to its full extent to the generation of electrical power or energy, and the transmission, disposal and sale thereof to the public, and the public shall have a right to demand and the said Susquehanna Power Company, its successors and assigns, shall apply to the extent of the electric power produced by it from said river all applicants in like situation for connections and facilities for electric power." (Italics ours.)

The objection of the Philadelphia Rapid Transit Company, to the effect that the Conowingo project will prove so costly that it will result in an increase in rates to the customers of the Philadelphia Electric Company was gone into at great length before the Pennsylvania Commission, sitting in Philadelphia and Harrisburg. These objections were considered very carefully, and a change has been made in the financial set-up of the enterprise which will meet them. It is not necessary to discuss that situation here as it is one which almost entirely affects Philadelphia customers of electricity whose interest will be cared for by the Pennsylvania Commission.

All State Interests Protected

Before hearings were begun on applications for this commission's approval of the project, a definite understanding was had with Governor Ritchie that the interest of the [fol. 440] State, Baltimore City and the counties of Harford and Cecil in roads, bridges, fish and water must be protected before any action was taken by this Commission. Such protection has been assured through the filing with this Commission of an agreement between Baltimore City and The Susquehanna Power Company providing for the taking of water from the pool when and if needed to augment the city's water supply: of an agreement between the company, the State Roads Commission, the Board of Public Works, and the County Commissioners of Harford and Cecil counties, providing for the protection to State and county interests in roads and bridges; and a letter from the Attorney General's Department as counsel for the Conservation Commissioner in which this Commission is informed that the charter obligations of The Susquehanna Power Company and the conditions imposed in the Federal power license will permit the Conservation Commissioner to take such steps as may be necessary to protect the fishery interests of the State. With these matters cared for, with the assurance that the project in Maryland will be under the jurisdiction of the Public Service Commission and with not a single objection to the project appearing in the stenographic record of the testimony, it would seem that there would be nothing for this Commission to do except to give its approval to the development of this enterprise.

It has been made clear that either the Conowingo power will be developed by the interests now offering to do so

with the Philadelphia market primarily in view, or it will not be developed at all. This Commission is not aware that Maryland, or any of its political units has ever objected to the investment here of outside capital. Rather, such investment has been encouraged and sought after. Yet in this instance, when an enterprise involving no less than $50,000,000 and perhaps much more comes to the State's doors; which means the expenditure of approximately $40,000,000 or perhaps more in actual construction work in this State in the utilization of something that has been going to waste for ages; that will mean the employment of several thousand men for several years; that not only will yield the State and two of its counties a handsome annual revenue but will give the State the first call on the product of this huge investment; which submits itself on every subject to the regulatory authority of the State [fol. 441] as to rates and charges and the amounts which it shall earn on its investment; the effort is made in some quarters to hold it up as something sinister, and as a grave menace to the State; and that approval of the project by this Commission will mean the bartering away of one of the State's great natural resources. To this Commission all this seems nothing more than a bad dream or a phantasy of a too vivid imagination.

What Approval Now Involves

No possible right of the people of Maryland will be lost or impaired by the approval of this project now. Nothing which is theirs will be bartered or given away. It must be remembered that The Susquehanna Power Company is now in legal existence and operation in Maryland by reason of its charter granted by the Legislature of 1908 and by the action of this Commission taken at various times, prior to the beginning of the present case and that if it could itself finance this project it could go ahead at once. Moreover, there would be no limitation as to the territory into which it could send its current except that it could not send that current into Baltimore.

At this time favorable action of the Public Service Commission involves nothing but the validation of the franchise of the Susquehanna Electric Company, which is the Maryland operating company in the inter-corporate setup, the sale of its stock to and the purchase of the stock by the

Philadelphia Electric Company, the general approval of the inter-corporate setup, and the general approval of the financial plan as modified.

Should there by any mistake about these matters, there will be ample time to remedy it. The project cannot reach the distributing stage for several years. So far as has been possible the question of a supply of current for Maryland consumers, and the manner in which it is to be supplied, is settled in advance by the Commission's order. No question as to rates or service can arise until the distribution stage is reached. If later it should develop that any additional legislation is required, this can be secured long before the time comes when it will be needed.

[fol. 442] Therefore, the Commission will pass an order, which, while permitting the enterprise to proceed, will safeguard every Maryland interest. Except for the particular matters mentioned above, the approval given by this Commission to all other matters is simply of a general character, and is given for the purpose of permitting the enterprise to proceed. Other matters, all of which will require specific approval of the Commission must be brought before it later in separate proceedings.

BEFORE THE PUBLIC SERVICE COMMISSION OF MARYLAND

Case No. 229. Order No. 9993

In the Matter of THE SUSQUEHANNA POWER COMPANY and THE SUSQUEHANNA ELECTRIC COMPANY Application to Permit the Susquehanna Electric Company to Issue Its Capital Stock and to Exercise Its Franchises; to Approve a Plan and Intercorporate Arrangements for Financing the Project of the Susquehanna Power Company under Its Charters, and to Exercise and Enjoy All Rights and Privileges Granted to It and the Susquehanna Water Power Company, a Corporation of Pennsylvania, under Joint Application for License from the Federal Power Commission in Respect of What is Known as the "Conowingo Project"

It is, therefore, this 13th day of January in the year nineteen hundred and twenty-six, by the Public Service Commission of Maryland,

Ordered: (1) That the Susquehanna Electric Company be and it is hereby authorized to exercise its franchises under the terms and provisions of its charter submitted to this Commission.

And it is further ordered: That copies of this order be forthwith served upon The Susquehanna Power Company and upon the Susquehanna Electric Company, and that [fol. 443] each of the said companies, within ten (10) days from the date of the service of such copies, advise this Commission in writing whether or not it will accept and abide by the same.

Harold E. West, J. Frank Harper, Ezra B. Whitman, Commissioners.

EXHIBIT NO. 5 OF THE COUNTY COMMISSIONERS OF HARFORD COUNTY

(Filed with the State Tax Commission of the State of Maryland on June 8th, 1929)

License from the Federal Power Commission to The Susquehanna Power Company, and the Philadelphia Electric Power Company, Project No. 405, dated 20th February, 1926.

Acceptance of all terms and conditions imposed by the license, by the Philadelphia Electric Power Company and by The Susquehanna Power Company are printed at the end of the license, and duly certified by O. C. Merrill, Executive Secretary of the Federal Power Commission.

Federal Power Commission

License on Navigable Waters

Project No. 405

Maryland and Pennsylvania

The Susquehanna Power Company and Philadelphia Electric Power Company

Whereas, by Act of Congress, approved June 10, 1920 (41 Stat. 1063), designated therein as "The Federal Water

Power Act" and hereinafter called "the Act", the Fed-
[fol. 444] eral Power Commission, hereinafter called the "Commission", is authorized and empowered inter alia to issue licenses for the purpose of constructing, operating, and maintaining dams, water conduits, reservoirs, power houses, transmission lines, or other project works necessary or convenient for the development, transmission and utilization of power across, along, from or in any of the navigable waters of the United States, or upon any part of the public lands and reservations of the United States (including the Territories), or for the purpose of utilizing the surplus water or water power from any government dam; and

Whereas, The Susquehanna Power Company, a corporation organized and existing under the Laws of the State of Maryland and having its office and principal place of business in the town of Bel Air, in the State of Maryland (hereinafter designated as "A", or as "Licensee 'A' "), and Philadelphia Electric Power Company (formerly known as Susquehanna Water Power Company, the change in name having, by appropriate and lawful action, been made subsequent to the filing of the application for license hereinafter mentioned and a certified copy of the record of said change being on file with the Commission), a corporation organized and existing under the laws of the Commonwealth of Pennsylvania and having its office and principal place of business in the City of Harrisburg in the Commonwealth of Pennsylvania (hereinafter designated as "B", or as "Licensee 'B' "), said corporations being herelnafter jointly designated as "the Licensees", have, in pursuance of the provisions of a preliminaary permit issued to The Susquehanna Power Company on the 3rd day of August, 1923, made application in due and proper form to the Commission for a license for a power project, designated as Project No. 405 on the records of the Commission, and for authority to construct, maintain and operate on and in the vicinity of the Susquehanna River in the counties of Harford and Cecil, State of Maryland, and of York, Lancaster, Chester, Delaware and Montgomery, Commonwealth of Pennsylvania, certain project works, as here-

inafter described, necessary or convenient for the development and improvement of navigation and for the development, transmission and utilization of power across, along, [fol. 445] from and in the Susquehanna River, a navigable waterway of the United States; and

Whereas, Each of said Licensees now owns, or expects to own, a part of the project works and other properties comprising the complete unit of improvement or development necessary for the purposes of said project; and

Whereas, Licensee "A" and Licensee "B" have submitted to the Commission satisfactory evidence of their compliance with the laws of the State of Maryland and of the Commonwealth of Pennsylvania, respectively, as required by Section 9, Sub-section (b) of the Act, and the Commission is satisfied as to their ability to carry out the plans for said project as filed with said application.

Whereas, Notice of said application has been given and published by the Commission, as required by Section 4 of the Act; full opportunity has been given to all interested parties to be heard; and no application for said project or in conflict therewith, has been filed by any State or municipality; and

Whereas, The maps, plans and specifications of said project and of said project works, as hereinafter described, have been approved by the Commission, and the plans of the dam and other structures affecting navigation have been approved by the Chief of Engineers and the Secretary of War; and

Whereas, The Commission finds that said project, as hereinafter described, will be best adapted to a comprehensive scheme of improvement and utilization of said waterway for the purposes of navigation, of water power development and of other beneficial uses; and

Whereas, The Commission, did, on the second day of January, 1925, find that the contemplated improvement is desirable and justified in the public interest for the purpose of improving or developing a waterway, namely, said Susquehanna River, for the use or benefit of interstate and foreign commerce, a certified copy of the records of the Commission containing such finding being hereto attached; and

[fol. 446] Whereas, Licensee "A" and Licensee "B" have entered into, or propose to enter into, a certain agreement with the Susquehanna Electric Company, a corporation organized and existing under the laws of the State of Maryland (hereinafter designated as "X," or as "Lessee 'X' "), and with the Philadelphia Electric Company, a corporation organized and existing under the laws of the Commonwealth of Pennsylvania (hereinafter designated as "PX," or as "Lessee 'PX' "), said corporation being hereinafter jointly designated as "The Lessees," a copy of which agreement, when executed, shall be attached hereto and made a part hereof and be identified as "Master Contract," under the terms of which "A," "B," "X" and "PX" agree that they and each of them will enter into certain agreements described in said "Master Contract" and will undertake and perform the obligations described in said "Master Contract" and in said agrements, said agreements being identified and described as follows, and when executed to be attached to and to become a part of this license:

1. An agreement between "B" and "A," known as "Pool Agreement," regarding the creation, maintenance and operation of the pool in Pennsylvania.

2. An agreement between "A" and "X," known as "Lease of Maryland Properties," whereby "A" agrees to lease to "X," under and subject to a certain mortgage described in said agreement, the Maryland properties of "A," together with "A's" rights under the aforesaid "Pool Agreement."

3. An agreement between "B" and "PX," known as "Lease of Pennsylvania Transmission Lines to Lower Merion Township," whereby "B" agrees to lease to "PX," under and subject to the mortgage aforesaid, its transmission lines to Lower Merion Township, subject to this license, located in the Commonwealth of Pennsylvania.

4. An agreement between "X" and "PX," known as "Operating Agreement," whereby "X" agrees to deliver to "PX," or to its successors or assigns, the electrical energy produced by "X" from the Maryland properties aforesaid.

[fol. 447] 5. An agreement between "PX" and "A," known as "Guaranty Agreement," whereby, in consideration of the undertakings by "A" with "X," as set forth in said "Lease of Maryland Properties," "PX" guarantees to "A" the performance by "X" of the terms and conditions of said "Lease of Maryland Properties."

6. An agreement between "A" and "B," known as "'A' Securities Agreement," whereby "A" agrees to issue to "B" its capital stock, which shall be purchased by "B" in accordance with the terms and conditions of said agreement, and whereby "B" agrees to pay over to "A," or on its order, such sums as may be required to liquidate the costs of the aforesaid Maryland properties.

7. An agreement between "B" and "PX," known as "'B' Securities Agreement," whereby "B" agrees to issue its preferred and common stock as set forth in said agreement and whereby "PX" agrees to purchase or underwrite the sale of the preferred and common shares of the stock of "B" in accordance with the terms of said agreement; and

Whereas, Licensee "A" and Licensee "B," on the 12th day of February, 1926, and on the 15th day of February, 1926, respectively, have, pursuant to the authorizations of their respective boards of directors, copies of the records thereof being hereto attached, accepted, in writing, all the terms and conditions of the act and of this license; and

Whereas, Lessee "X" and Lessee "PX" on the 12th day of February, 1926, and on the 18th day of February, 1926, respectively, have, pursuant to authorizations of their respective boards of directors, copies of the records thereof being hereto attached, accepted in writing all the terms and conditions of the act and this license, in so far as their respective rights and obligations in and under the several agreements aforesaid are in any wise affected by said terms and conditions.

Now, Therefore, The Commission hereby issues this license to the licensees for the purpose of constructing, operating and maintaining certain project works necessary or convenient for the development and improvement of navi- [fol. 448] gation and for the development, transmission, and utilization of powers across, along, from or in said Susquehanna River, and constituting a part of the project hereinafter described; said license, including the period thereof,

being subject to all the terms and conditions of the act and of the rules and regulations of the Commission pursuant thereto as amended and made effective on the 6th day of June, 1921, as though fully set forth herein, which said rules and regulations are attached hereto and made a part hereof, and being subject also to the following express conditions and limitations, to wit:

Article 1. This license is issued for a period of fifty (50) years from the date hereof, and in consideration of such license and of the benefits and advantages accruing thereunder to the licensees it is expressly agreed by the licensees, that the entire project, project area and project works as hereinafter designated and described, whether or not located in, on or along said Susquehanna River, shall be subject to all the terms and conditions of this license, including the terms and conditions of the Act and of the rules and regulations of the Commission pursuant thereto and made a part of this license.

Article 2. The project covered by and subject to this license is located on and in the vicinity of the Susquehanna River and consists of:

A. All lands constituting the project area and inclosed, or the location of which is shown, by the project boundary, and/or interests in such lands necessary or useful for the purposes of the project, whether such lands or interests therein are owned or held by the licensee or by the United States; such project area and project boundary being more fully shown and described by certain exhibits which accompanied said application for license and which are designated and described as follows:

Exhibit C. Three typewritten sheets entitled "Field Notes and Description of the Entire Final Area and Boundaries." Signed by George Bullock and N. E. Hause on November 3, 1924.

Exhibit J. Map in one sheet designated "Drawing No. [fol. 449] 4," entitled "Drainage Area and Boundaries of the Project." iSgned by George Bullock and N. E. Hause on September 10, 1924.

Exhibit K. Map in one sheet designated "Drawing No. 5" and "Drawing No. 6," entitled "Boundaries of the

the Project." Signed by George Bullock and N. E. Hause September 10, 1924.

B. All water rights, reference to which is made in a certain exhibit which accompanied the application for license and which is designated and described as follows:

Exhibit E. Two typewritten sheets entitled "Statement of the Nature, Extent and Ownership of the Water Rights, Lands and Properties." Signed by George Bullock and N. E. Hause on November 3, 1924.

C. All project works consisting of—

(a) A dam and reservoir across and in the Susquehanna River; said dam being located a short distance above Octoraro, Maryland;

(b) A power house and equipment therein;

(c) A switching station at said power house;

(d) Transmission lines connecting said switching station with the Philadelphia Electric Company's transmission system at or near the boundary of Lower Merion Township in Pennsylvania;

Said project works being more fully shown and described by certain exhibits which accompanied said application for license and which are designated and described as follows:

Exhibits L and L-1. Maps and plans in four sheets designated and entitled:

(a) "Drawing No. 3"—"Survey of Dam Site." Signed by George Bullock and N. E. Hause on September 10, 1924;

[fol. 450] (b) "Drawing No. 9-A"—"General Plan of Development";

(c) "Drawing No. 10-A"—"General Details of Structures";

(d) "Drawing No. 11-A"—"Cross Section Power House."

Each signed by Wm. C. L. Eglin, Agent, under date of September 10, 1924.

Exhibit M-1. Typewritten manuscript, pages Nos. 50 to 59, inclusive, together with the drawing shown on page 60.

Signed by W. C. L. Eglin, Agent, under date of November 3, 1924.

D. All other structures, fixtures, equipment or facilities used or useful in the maintenance and operation of the project and located upon the project area, including such portable property as may be used and useful in connection with the project or any part thereof, whether located on or off the project area, if and to the extent that the inclusion of such property as a part of the project works is approved or acquiesced in by the Commission; also all other rights, easements or interests the ownership, use, occupancy or possession of which is necessary or appropriate in the maintenance and operation of the project or appurtenant to the project area.

Article 3. The maps, plans, specifications and statements designated and described in Article 2 hereof as Exhibits C, E, J, K, L, L-1 and M-1, respectively, and approved by the Executive Secretary for the Commission in accordance with its authorization of January 2, 1925, as amended on May 23, 1925, are hereby made a part of this license, and no substantial change shall hereafter be made in said exhibits, or any of them, until such change shall have been approved by the Commission. Provided, however, That if the licensees deem it necessary or desirable that said approved maps, plans, specifications and statements, or any of them, be changed there shall be submitted to the Commission for approval, amended, supplemented or additional maps, plans, specifications and statements covering the proposed [fol. 451] changes, and upon approval by the Commission of such proposed changes such amended supplemental or additional maps, plans, specifications and statements shall become a part of this license and shall supersede, in whole or in part, such map, plan, specification or statement, or part thereof, theretofore made a part of this license as may be specified, respectively, in the order or endorsement of approval.

Before proceeding with the construction of the transmission line or lines the licensees shall submit for approval of the Commission such maps, plans, specifications and statements with respect to such lines as are required by Regulation 4 of said rules and regulations of the Commission; and said maps, plans, specifications and state-

ments, when so approved, shall likewise become a part of this license and be subject to change only for the reasons and in the manner above provided.

Article 4. Said project works shall be constructed in substantial conformity with the approved maps, plans and specifications thereof made a part of this license and designated and described in Articles 2 and 3 hereof or as changed in accordance with the provisions of said Article 3. Except when emergency shall require for the protection of navigation, life, health, or property, no substantial alteration or addition not in conformity with the approved plans shall be made to any dam or other project works constructed under this license without the prior approval of the Commission; and any emergency alteration, or addition so made shall thereafter be subject to such modification and change as the Commission shall direct. Minor changes in or divergence from such approved maps, plans and specifications may be made in the course of construction, if such changes will not result in decrease in efficiency, in material increase in cost, or in impairment of the general scheme of development; but any such minor charges made without the prior approval of the Commission which in its judgment have produced or will produce any of such results shall be subject to such alteration as the Commission may direct.

Article 5. The work of construction under this license whether or not conducted upon lands of the United States, shall be subject to the inspection and approval of the United [fol. 452] States District Engineer at Baltimore, Maryland, or of such other officer or agent as the Commission may designate, who shall be the authorized representative of the Commission for such purposes. The licensees shall notify such representatives of the date upon which work will begin, and as far in advance thereof as said representative may reasonably specify, and shall notify him promptly in writing of any suspension of construction for a period of more than one week, and of its resumption and completion.

Article 6. Subject to the provisions of Section 13 of the act, the licensees shall begin the construction of said project works on or before June 1, 1926, shall thereafter, in good faith and with due diligence, prosecute such construction and:

(a) Shall, on or before December 31, 1929, complete said project to an installation of seven units, having an aggregate capacity of not less than 300,000 horse power;

(b) Shall, at such time and to the extent economically justified in the public interest, as determined by the Commission, excavate the tail-race of the power plant so as to develop the head available between the elevation of the crest of the dam and mean sea level as limited by the foundations of the turbine generating units.

(c) Shall, from time to time thereafter construct such portion of the balance of such development as the Commission may direct, so as to supply adequately the reasonable market demands until such development shall have been completed: Provided, That all of said project works shall be completed on or before December 31, 1935.

Article 7. Upon the completion of each part of the project works as separately specified in Article 6 hereof, or at such other time as the Commission may direct, the licensee shall submit to the Commission for approval revised maps, plans, specifications and statements in so far as necessary to show any divergence from or variations in the project area as finally located or in the project works as constructed when compared with the area shown and the works designated or described in this license or in the maps, plans, specifications and statements approved by the Commission under [fol. 453] the provisions of Article 3 hereof, together with a statement in writing setting forth the reasons which in the opinion of the licensees necessitated or justified variations in or divergence from the approved maps, plans, specifications and statements. Such revised maps, plans, specifications and statements shall, if and when approved by the Commission, be made a part of this license and shall, to the extent and in the particulars set forth in the order or endorsement of approval, be substituted for the maps, plans, specifications and statements theretofore approved by the Commission under the provisions of Article 3 hereof. The maps finally approved by the Commission and made a part of this license under the provisions of Article 3 and/or 7 hereof shall show the project area to an adequate scale and the boundary thereof either by legal subdivisions, by metes and bounds survey, or by uniform offsets from center-line

survey. Said project area shall include all lands without respect to ownership and whether or not the exact boundaries can be definitely fixed and determined, the use and occupancy of which are or will be valuable or serviceable in the maintenance and operation of the project; on which are located or to which are appurtenant the project works (other than portable property) and the rights, easements or interests likewise valuable and serviceable; and the ownership or possession, or the right of use and occupancy of which are subject to acquisition by the United States under the provisions of Section 14 of the act. Said maps shall show the ownership of each parcel of land in said project area, and with respect to each parcel to which the licensees have not the fee title, the character of the rights of use and occupancy possessed by the licensees, together with the term of such right.

Article 8. In so far as any material is dredged or excavated in the prosecution of the work herein authorized, it shall be removed and deposited so it will not interfere with navigation and to the satisfaction of said district engineer.

Article 9. For the purpose of determining the stage and flow of the stream or streams from which water is to be diverted for the operation of said project works and of the amount of water held in and drawn from storage, licensee "A" shall install, as soon as practicable and thereafter [fol. 454] maintain a standard gage and stream gaging station at a suitable point, shall provide for adequate periodical readings of such gage, for the adequate rating of said station, and for adequate rating and recording the flow through the water wheels of the power plant.

Licensee "A" shall also install and maintain standard meters adequate for the determination of the amount of electric energy generated by said project works. The number, character and location of gages, meters or other measuring devices, and the method of operating thereof may be altered from time to time if necessary to secure adequate determinations, but such alteration shall not be made except with the approval of the Commission or its authorized representative or upon the specific direction of the Commission. The installation of gages, the ratings of said

stream or streams and the determination of the flow thereof, shall be under the supervision of the district engineer of the United States Geological Survey having charge of stream gaging operations in the region of said project. Subject to the provisions of Article 28 hereof, licensee "A" shall reimburse the said United States Geological Survey for costs incurred in such supervision or for such part thereof as said district engineer may deem equitable in the circumstances; shall keep accurate and sufficient record of the foregoing determinations to the satisfaction of the Commission; and shall make return of such records annually, at such time and in such form as the Commission may prescribe.

Article 10. The Licensees shall be liable for all damages occasioned to the property of others by the construction, maintenance, or operation of said project works, or of the works appurtenant or accessory thereto, and in no event shall the United States be liable therefor.

Article 11. In the construction and maintenance of the project works herein specified, the Licensees shall place and maintain su-table structures to reduce to a reasonable degree the liability of contact between their transmission lines and telegraph, telephone and other signal wires or power transmission lines not owned by the Licensees, and shall also place and maintain suitable structures and devices to reduce to a reasonable degree the liability of any structures or wires falling and obstructing traffic and en- [fol. 455] dangering life on highways, streets, or railroads.

Article 12. The Licensees shall allow officers and employees of the United States free and unrestricted access in, through and across the said project works in the performance of their official duties.

Article 13. The operation of any navigation facilities which may be constructed as a part of or in connection with any dam or diversion structure built under the provisions of this license shall at all times be controlled by such reasonable rules and regulations in the interest of navigation, including the control of the level of the pool caused by such dam or diversion structure, as may be made from time to time by the Secretary of War. Such rules and regulations may include the maintenance and operation by Licensee

"A", at its own expense, of such lights and signals as may be directed by the Secretary of War, and such fishways as may be prescribed by the Secretary of Commerce.

Article 14. Licensee "A" shall construct and install such appliances as are necessary for furnishing power for the operation of navigation facilities, including lights and signals, whether constructed by the Licensees, or by the United States; and shall furnish free of cost to the United States power for the operation of such navigation facilities.

Article 15. The United States specifically retains and safeguards the right to use water in such amount, to be determined by the Secretary of War, as may be necessary for the purposes of navigation.

Article 16. The Licensees, whenever the United States shall desire to install navigation facilities, shall convey to the United States, free of cost, such of their lands and rights of way and permit such control of pools as may be required for such navigation facilities; and Licensee "A" shall grant to the United States, free of cost, such right of passage through its dams or other structures as may be required for providing or using such facilities.

Article 17. The Licensee shall cooperate with the Bureau [fol. 456] of American Ethnology of the Smithsonian Institution in the preservation or reproduction of certa-n prehistoric rock carvings located within the proposed reservoir area: Provided, That the financial obligations assumed in such cooperation shall not exceed $5,000.

Article 18. Inasmuch as the project covered by this license has been under investigation and in process of development for a long period of years and a number of individuals, companies and corporations have been interested therein from time to time and have made expenditures in connection therewith, and in view of the further fact that a large part of the lands and certain other property necessary to the project were acquired in the year 1922 by The Susquehanna Power Company, through the issuance, with the consent of the Public Service Commission of Maryland, of its capital stock, all of which and other circumstances make it impossible to determine the actual

cost of said project in terms of money; it is hereby mutually agreed that the cost of said project up to the date of issuance of this license shall be fixed jointly by the Public Service Commission of the Commonwealth of Pennsylvania, the Public Service Commission of Maryland, and the Federal Power Commission; it being understood, however, that if said bodies shall not unanimously agree on said costs, then the Federal Power Commission and the Public Service Commission of Maryland shall fix said cost of properties within the State of Maryland, and the Federal Power Commission and the Public Service Commission of the Commonwealth of Pennsylvania shall fix said cost of properties within the State of Pennsylvania, and that the sum of said findings shall constitute the cost of said properties to the date of this license; and it being further understood that if said agreement shall not be reached within six months from the date of execution hereof, then the Federal Power Commission shall fix an amount which, in its opinion, represents said cost. It is further understood and agreed that the licensees may present for consideration any documentary or other evidence or statements or exhibits bearing upon the cost of said project up to the date of issuance of this license and which the licensees may consider of value in connection with the determination of the cost of the project up to said date.

[fol. 457] Article 19. Upon the completion of the construction of said project or any part thereof for which dates of completion are specified in Article 6 hereof, or of any addition to or betterment of said project, the licensees shall file with the Commission a statement, under oath, in duplicate, showing the actual legitimate cost of construction thereof, together with the price paid for water rights, rights of way, lands or interest in lands constituting any part of the project property subject to the provisions of this license as specified in Regulation 20, Section 2, of said rules and regulations of the Commission. Subject to the provisions of Article 18 hereof, such statement, or statements, shall include all proper and legitimate costs, whether incurred prior to date of issuance of license or on and after such date; and the licensees shall, if requested by the Commission, show separately on such statement, or statements,

or on a special report, or reports, the items and amounts of cost incurred prior to date of issuance of license, with such other details with respect thereto as the Commission may require. Each and every item of cost included in such statements shall be supported by proper voucher or other evidence; and any such voucher or evidence or certified copy thereof in support of any item properly includible in said cost shall become a part of the permanent records of said project and shall be kept and retained by the licensees in the manner required by the Commission. Only items so supported, or determined under the provisions of Article 18 hereof, shall be entered upon the fixed capital accounts of said project or included in the cost thereof.

Article 20. Whenever the licensees are directly benefited by the construction work of another licensee, a permittee, or of the United States of a storage reservoir or other headwater improvement, the licensees shall reimburse the owner of such reservoir or other improvement for such part of the annual charges for interest, maintenance and depreciation thereon as the Commission may deem equitable. The proportion of such charges to be paid by the licensees shall be determined from time to time by the Commission. Whenever such reservoir or other improvement is constructed by the United States the licensees shall pay similar charges into the treasury of the United States upon bills rendered by the Commission.

[fol. 458] Article 21. The licensees shall pay to the United States reasonable annual charges for the purpose of reimbursing the United States for the costs of the administration of the act, the payment of such charges for any calendar year to be made to the United States at the end of the year, or within thirty days thereafter, upon bills rendered or approved by the Commission. Such charges shall be determined in accordance with the provisions of Regulation 14 of said rules and regulations of the Commission, and for the purposes of such determination the power capacity upon which such charges shall be based, shall, subject to the provisions of Section 3 of said Regulation 14, be taken as 44,700 horse power.

Article 22. After the first twenty years of operation of said project under this license, out of surplus earned there-

after, if any, accumulated in excess of a specified reasonable rate of return upon the actual, legitimate investment of the licensees in said project, all as defined in and determined by the provisions of Regulation 17 of said rules and regulations of the Commission, the licensees shall establish and maintain amortization reserves, which reserves shall, in the discretion of the Commission, be held until the termination of the license or be applied from time to time in reduction of the net investment. Such specified rate of return shall, subject to the proviso of Paragraph A, Section 3, of the said regulation, be one and one-half (1½) times the weighted average annual interest rate payable on the par value of the bona fide interest bearing debt of the licensees actually outstanding, in whole or in part, on account of project property at the beginning of the period of amortization and of each calendar year thereafter; such weighted average annual interest rate being determined as provided in paragraphs B and C of Section 3 of said Regulation 17: Provided, That if at the beginning of the period of amortization or of any calendar year thereafter, the outstanding interest-bearing debt of the licensees on account of the project or projects under license, together with any other works or property operated in connection therewith, is less than 25 per cent of the actual, legitimate investment of the licensees in said project or projects, then and in such event for the calendar year next following the specified rate of return shall be two (2) times the legal rate of in- [fol. 459] terest in the State in which the project or major part thereof is located.

Subject to the provisions of Section 6 of said regulation, the following proportions of such surplus earnings shall be paid into and held in such amortization reserves: Of all surplus earnings up to and including 2 per cent upon the actual, legitimate investment, 30 per cent thereof shall be so paid; of all surplus earnings in excess of 2 per cent and not in excess of 4 per cent upon such investment, 50 per cent thereof shall be so paid; of all surplus earnings in excess of 4 per cent and not in excess of 6 per cent, 70 per cent thereof shall be so paid, and of all surplus earnings in excess of 6 per cent, 90 per cent thereof shall be so paid: Provided, That if at the end of any calendar year of the amortization period the Commission shall find that the accumulated earnings of the licensees during the period of

operation, including the first twenty (20) years thereof, have not yielded a fair return upon the actual legitimate investment in the project or projects under license, the proportion of such surplus earnings for such calendar year and for succeeding calendar years to be paid into such amortization reserves shall be ten (10) per cent thereof until such time as the accumulated earnings of the licensees represent, in the judgment of the Commission, a fair return upon such investment for such period of operation.

Licensee "A" and Licensee "B" shall each contribute to such reserves from time to time in a proportion determined by the amount of such surplus which each has earned and by the amount of such investment which each has made in said project. The creation and maintenance of such reserves shall be an obligation resting solely upon the licensees and shall not, directly or indirectly, be transferred to or assumed by any other public service corporation.

Article 23. The proposed leases of the properties of the licensees, in accordance with the terms and provisions of the aforesaid agreements, namely, "Pool Agreement," "Lease of Maryland Properties," and "Lease of Pennsylvania Transmission Lines to Lower Merion Township," shall not become effective until after specific written approval of said agreements by the Commission, and unless [fol. 460] said agreements comply with the conditions specified in Articles 24, 25 and 26 hereof, respectively, and their effect shall be limited by such specific conditions, if any, as the Commission may prescribe in its order of approval. No other lease of said project, or of any part thereof, whereby the lessee is granted the exclusive occupancy, possession, or use of project works for purposes of generating, transmitting, or distributing power, shall be made without the prior written approval of the Commission; and the Commission may, if in its judgment the situation warrants, require that all the conditions of this license, of the Act, and of said rules and regulations of the Commission shall be applicable to such lease and to such property so leased to the same extent as if the lessee were a licensee hereunder: Provided, That th provisions of this article shall not apply to parts of the project or project works which may be used by another jointly with the licensees, or with either of them under a contract or agreement whereby

the licensees, or either of them, retain the occupancy, possession and control of the property so used and receive adequate consideration for such joint use, or to leases of land while not required for purposes of generating, transmitting or distributing power, or to buildings or other property not built or used for said purposes, or to minor parts of the project or project works, the leasing of which will not interfere with the usefulness or efficient operation of the project by the licensees for said purposes.

Article 24. Licensee "A" and Licensee "B" are hereby authorized, subject to the conditions hereinafter contained, to enter into an agreement regarding the creation, maintenance and operation of the pool in Pennsylvania, in substantial conformity with the terms and conditions of the draft of the aforesaid "Pool Agreement," as contained in a certain document marked "Conowingo Leases Twelfth Revise 1-18-26," certified copy of which document, submitted to the Commission under date of January 20, 1926, is filed of record with the application for this license; such authorization being given on the specific condition, and not otherwise, that said agreement shall expressly state that the furnishing to Licensee "B" by Licensee "A" of electrical energy produced by the hydro-electric plant of "A" in Maryland in such quantities as "B" may at any time in [fol. 461] the future require for distribution in Pennsylvania to purchasers and consumers other than "PX," in order that "B" may fully comply with its charter obligations, and the amount or amounts to be paid to Licensee "A" by Licensee "B" for electrical energy so furnished, shall be subject to regulation by any State or Federal commission having jurisdiction thereof.

Article 25. Licensee "A" is hereby authorized, subject to the condition hereinafter contained, to lease to Lessee "X" its Maryland properties and to assign to Lessee "X" its rights acquired from Licensee "B" under the aforesaid "Pool Agreement," all in substantial conformity with the terms and conditions of the draft of the aforesaid "Lease of Maryland Properties," as contained in the document described in Article 24 hereof; such authorization being given on the specific condition, and not otherwise, that said lease shall expressly state that the rental to be

paid to Licensee "A" thereunder shall be subject to such changes in amount or in basis of calculation of said rental, or of any part thereof, as may be ordered from time to time by the Public Service Commission of Maryland, the Public Service Commission of the Commonwealth of Pennsylvania, the Federal Power Commission, or of any of their successors, within the respective powers and jurisdiction of each as determined by the Constitution and laws of the State of Maryland, of the Commonwealth of Pennsylvania, and of the United States, respectively, and that if in any proceedings instituted or prosecuted by the Public Service Commission of Maryland, the Public Service Commission of the Commonwealth of Pennsylvania, the Federal Power Commission, or any of their successors, respecting the rates to be charged, or the services to be rendered by "A," "B," "X" or "PX," or respecting the rights granted or obligations assumed by any of the parties to the several agreements described as aforesaid, or respecting any other matter within the respective powers and jurisdictions of said commissions, the amount, or the conditions of payment, or the basis of computation of the rental, or of any part thereof, as prescribed in said lease, shall by appropriate order within the respective powers and jurisdictions of said commissions or any of their successors as determined by [fol. 462] the Constitution and laws of the State of Maryland, the Commonwealth of Pennsylvania and the United States, respectively, be so changed as to increase or decrease the rental otherwise payable under said lease, the obligations of Lessee "X" to Licensee "A" thereunder shall be increased or decreased in like degree; and such authorization being likewise given on the understanding and agreement that neither such authorization nor any subsequent approval of said lease shall be construed as relieving the said parties, or any one or more of them, from the burden of proving the reasonableness of the amount or basis of computation of said rental or part thereof in any proceedings instituted or prosecuted as aforesaid.

Article 26. Licensee "B" is hereby authorized, subject to the condition hereinafter contained, to lease to Lessee "PX" its Pennsylvania transmission lines to Lower Merion Township in substantial conformity with the terms and conditions of the draft of the aforesaid "Lease of Pennsylvania Transmission Lines to Lower Merion Township,"

as contained in the document described in Article 24 hereof; such authorization being given on the specific condition, and not otherwise, that said lease shall expressly state that the rental to be paid to Licensee "B" thereunder shall be subject to such changes in amount or in basis of calculation of said rental, or of any part thereof, as may be ordered from time to time by the Public Service Commission of Maryland, the Public Service Commission of the Commonwealth of Pennsylvania, the Federal Power Commission, or any of their successors, within the respective powers and jurisdictions of each as determined by the Constitution and laws of the State of Maryland, of the Commonwealth of Pennsylvania, and of the United States, respectively, and that if in any proceedings instituted or prosecuted by the Public Service Commission of Maryland, the Public Service Commission of the Commonwealth of Pennsylvania, the Federal Power Commission, or any of their successors, respecting the rates to be charged ,or the services to be rendered by "A," "B," "X" or "PX," or respecting the rights granted or obligations assumed by any of the parties to the several agreements described as aforesaid, or respecting any other matter within the respective powers and jurisdictions of said commissions, the amount, [fol. 463] or the conditions of payment, or the basis of computation of the rental or of any part thereof, as prescribed in said lease, shall by appropriate order within the respective powers and jurisdictions of said commissions or any of their successors as determined by the Constitution and laws of the State of Maryland, the Commonwealth of Pennsylvania and the United States, respectively, be so changed as to increase or decrease the rental otherwise payable under said lease, the obligations of Lessee "PX" to Licensee "B" thereunder shall be increased or decreased in like degree; and such authorization being likewise given on the understanding and agreement that neither such authorization nor any subsequent approval of said lease shall be construed as relieving the said parties, or any one or more of them, from the burden of proving the reasonableness of the amount or basis of computation of said rental or part thereof in any proceedings instituted or prosecuted as aforesaid.

Article 27. Before the issuance or guarantee, in connection with said project, of any stocks, or of any bonds,

notes or other evidences of indebtedness having a maturity of more than two years from date of issue, and before the subjection of project properties to any lien to secure the payment of such evidence of indebtedness, in accordance with agreements made or to be made under the aforesaid "Master Contract," "'A' Securities Agreement," "'B' Securities Agreement" and/or otherwise, it is hereby understood and agreed:

(a) That Licensee "A" shall secure from the Public Service Commission of Maryland the requisite approval for any such security issues, guarantees, or liens to which it is to be a party; and

(b) Licensee "B" shall submit to the Federal Power Commission full particulars concerning any such security issues or liens, to which it is to be a party, and shall secure the approval of said Commission of the amount, character and terms of any such securities to be issued, of their rate of dividends or interest, of the purposes for which they are to be issued, of the price at which they are to be sold or otherwise disposed of, of the provisions of the mortgage or lien, if any, by which they are to be secured, of any and all [fol. 464] agreements relating to such securities or to their issuance, and of any other matters for which said Commission may deem its approval necessary or desirable.

Article 28. If, when, and so long as the aforesaid "Pool Agreement," "Lease of Maryland Properties," "Lease of Pennsylvania Transmission Lines to Lower Merion Township," "Operating Agreement," and "Guaranty Agreement" are in effect, the lessees shall be held responsible in the first instance, with respect to the following:

(a) Lessee "PX" shall be responsible for the efficient operation of the transmission lines in Pennsylvania from the State line to Lower Merion Township, for making all necessary repairs thereto and renewals and replacements thereof, and for complying with all requirements involving the operation and maintenance of said transmission lines.

(b) Lessee "X" shall be responsible for the efficient operation of so much of the project and project properties as are located in the State of Maryland, for making all necessary repairs thereto and renewals and replacements

thereof, and for complying with all requirements involving the operation and maintenance of said properties.

(c) Lessee "PX" shall be responsible for the payment to the United States of the annual charges accruing under this license, as provided in Article 21 hereof, and for the payment to Licensee "A" and to Licensee "B" of the amounts necessary for the creation and maintenance by Licensee "A" and by Licensee "B" of adequate depreciation reserves on account of said project and project properties, as required under the provisions of Section 10, subsection (c) of the act and of Regulation 16 of said rules and regulations of the Commission.

(d) Lessee "X" shall be responsible for the rating of gages and of gaging stations, for the record of water discharges, for the determination of the amount of electric energy generated by said project works, and of the amount of such energy delivered to Lessee "PX", and for reimbursement of the United States Geological Survey for ex-
[fol. 465] penses incurred in the rating of the stream or in the determination of the flow thereof, all as hereinbefore provided in Article 9 hereof.

Nothing herein contained shall relieve the licensees from ultimate responsibility with respect to the matters hereinabove named, in case of failure of the lessees, or either of them, to perform said duties, or any of them.

Article 29. For purposes of accounting for the investment in the project and the results of operation thereof and of determining the net investment therein, the project, as hereinbefore described, or as it may at any time be subject to this license, shall be considered and treated as a single unit of improvement or development irrespective of the ownership of the different parts thereof; and Licensee "A," Licensee "B," Licensee "X," and Lessee "PX" hereby agree that each will keep and maintain such accounts, records, or other data relating to said project or to its operations, and will make such statements and reports, either jointly or severally, as the Commission may require under the provisions of Section 4, subsection (f) of the act; and each of them hereby also agrees that any authorized representative of the Commission will at any and all reasonable times, upon request of the Commission, be given

access to any books, records, accounts, papers and memoranda in its custody or possession relating to said project or to the operation thereof, and will be allowed to examine such books, records, accounts, papers and memoranda, and to make copies thereof or abstracts therefrom, for the use or information of the Commission.

Article 30. It is hereby declared that the fulfillment of the conditions and requirements specified in Article 23, 24, 25, 26, 27, 28 and 29 hereof, and of each of them, is an essential condition of the issuance of this license and of the grant of rights to the licensees hereunder, and that except upon the assurance of the full and faithful performance of said conditions and requirements by the parties thereto, and by each of them, this license would not have been issued.

Article 31. It is hereby understood and agreed that, except to the extent otherwise authorized herein, the licensees, [fol. 466] their successors and assigns will, during the period of this license, retain the possession of all project property covered by this license as issued or as hereafter amended, including the project area, the project works, and all franchises, easements, water rights, and rights of occupancy and use; and that none of such properties valuable and serviceable to the project and to the development, transmission, and distribution of power therefrom will be voluntarily sold, transferred, abandoned, or otherwise disposed of without the approval of the Commission: Provided, That a mortgage or trust deed or judicial sales made thereunder, or tax sales, shall not be deemed voluntary transfers within the meaning of this article. The licensees further agree, on behalf of themselves, their successors and assigns, that, in the event said project is taken over by the United States upon the termination of this license, as provided in Section 14 of the act, or is transferred to a new licensee under the provisions of Section 15 of the act, they will be responsible for and will make good any defect of title to or of right of user in any such project property which is necessary or appropriate or valuable and serviceable in the maintenance and operation of the project, and will pay and discharge or will assume responsibility for payment and discharge of all liens or incumbrances upon said project or project property created by said licensees

or created or incurred after the issuance of this license: Provided, That the provisions of this article are not intended to prevent the sale or other disposition, between the date of this license and the date of completion of the construction of the project works and the filing of revised maps, plans, specifications and statements mentioned in Article 7 hereof, of any lands or other properties which are deemed to be unnecessary for the purposes of the project and of this license; or to prevent the abandonment or the retirement from service of structures, equipment, or other project works in connection with replacements thereof when they become obsolete, inadequate, or inefficient for further service due to wear and tear, or to require the licensees for the purpose of transferring the project to the United States or to a new licensee to acquire any different title or right of user in any such project property than was necessary to acquire for their own purposes as licensees.

[fol. 467] Article 32. With the written consent of the licensees, the Commission may, by order made under its seal, and after the public notice required by Section 6 of the act, modify, alter, enlarge, or omit, in so far as authorized by law, any one or more of the conditions or provisions of this license.

Article 33. The enumeration herein of any rights reserved to the United States, or to any State or municipality under the Act, or of any requirement of the Act, or of said rules and regulations of the Commission, shall not be construed in any degree as impairing any other rights so reserved by the Act, or as limiting the force of any other requirement of said Act or of said regulations.

In witness whereof the Federal Power Commission has caused its name and seal to be hereto signed and affixed in quintuplicate by its Executive Secretary this 20th day of February, 1926.

Federal Power Commission, by O. C. Merrill, Executive Secretary. (Seal of Federal Power Commission.)

In testimony of acceptance of all the terms and conditions of the Federal Water Power Act of June 10, 1920, (41 Stat. 1063), and of the further conditions imposed in the fore-

going license, Philadelphia Electric Power Company this 15th day of February, 1926, has caused its name and corporate seal to be hereto signed and affixed by Nathan E. Hause, its President, pursuant to a resolution of its Board of Directors, passed on the 9th day of February, 1926, a certified copy of the record thereof being hereto attached.

Philadelphia Electric Power Company, by Nathan E. Hause, President.

Attest: A. W. Lick, Secretary. (Seal of Philadelphia Electric Power Company.)

[fol. 468] BEFORE STATE TAX COMMISSION OF MARYLAND

In the Matter of the Appeal from the Assessment by the County Commissioners of Harford County of the Real Estate of the Susquehanna Power Company

REQUEST FOR RULINGS

The Susquehanna Power Company requests the State Tax Commission to rule, as matter of law:

1. That the County Commissioners of Harford County, and the State Tax Commission of Maryland, in making or revising the assessment of the real property of The Susquehanna Power Company, in said county, were and are required to assess such real property as is subject to assessment and taxation in said county in the same manner as like property of individuals is or would be assessed.

2. That in assessing the real estate of The Susquehanna Power Company, in Harford County, which is subject to assessment and taxation therein, such assessment should not be made by a higher proportion of valuation than other real property on the same tax roll or located in the same taxing district, is assessed at.

3. That the assessment of the real estate in Harford County owned by The Susquehanna Power Company and subject to assessment and taxation in said county, cannot lawfully be made by estimating the value of the entire property of said company, or its entire property in Maryland, or adopting the valuation placed thereon in said company's

reports to the Federal Power Commission or the Maryland Public Service Commission, or in its accounts kept in compliance with the rules and requirements of said comm-ssions, and then deducting or eliminating for such valuation all other items of property; but should be made by a separate valuation of the different items of real estate so subject to assessment and taxation in said county.

4. That as the testimony of the two engineers, Gregory and Fuller, who were employed by the County Commissioners of Harford County to make the valuation of all of [fol. 469] the real estate of the Susquehanna Power Company in Harford County (with the exception of the lands not submerged) shows without contradiction that such valuation of said real estate was made by methods totally inappropriate for the determination according to law of the fair taxable value of the items so valued, and upon a legally erroneous basis and by legally imp-oper conclusions; that therefore the assessment of all of said items, which was admittedly made in pursuance of such valuation thereof as so determined by said engineers, is erroneous, and should be vacated and set aside.

5. That neither the Federal franchise conferred upon the Susquehanna Power Company by the license offered in evidence, nor the franchise vested in said Company by the State of Maryland, under Chapter 268 of the Acts of 1908, or under any general law of the State of Maryland, are the subject of assessment or taxation by the County Commissioners or by this Commission in this proceeding; neither is any method of valuation or assessment proper which includes in or adds to the valuation of such real estate as may be properly the subject of such assessment, the value of such franchises or either of them, or the capitalization of any income derived from the exercise of such franchises.

6. That the power of the County Commissioners of Harford County, and of the State Tax Commission in this proceeding is limited to the fair assessment of such taxable real estate and improvements thereon as are located in Harford County; and does not in any case extend to real estate located outside of the State of Maryland; and that in assessing such real estate within said County as is subject to assessment and taxation therein, the real estate and ease-

ment of the Company which are located in Pennsylvania, or outside of either the State of Maryland or Harford County, cannot be included or the value thereof added in any way to the value of such real estate located in Harford County, so as to increase the fair assessable value thereof.

7. That so much of the real estate in Harford County, owned by the Susquehanna Power Company, as constitutes an essential or integral part of its "complete unit" and "project area" or of the pool and dam constructed or [fol. 470] erected by it on the Susquehanna River, under the terms of the license from the Federal Power Commission which has been offered in evidence, is exempt from assessment and taxation for State and County purposes, because in constructing, maintaining and operating said dam and pool, part of said complete unit and project area under said license, said Company is acting as an agency or instrumentality of the Federal Government, for the promotion of navigation and development of the navigable capacity and water power of said river, and the taxation by the State of Maryland or by said County of such part of its property will operate to defeat the objects and purposes of said license, and the rights reserved to the United States therein.

8. That under the terms of Chapter 66 of the Acts of 1784, offered in evidence, it was provided that such canal, locks and other works, with their profits and advantages, as should be constructed by the Proprietors of the Susquehanna Canal for the purpose of making the Susquehanna River navigable, should not be subject or liable to pay any tax, imposition, duty or assessment whatever, provided that such exemption from taxation should extend to such works as relate merely to and are necessary for the navigation of such canal; and by Chapter 268 of the Acts of 1908 there was expressly conferred upon the Susquehanna Power Company, which was declared to be a slack water navigation company, all of the power and authorities of the charter of said Proprietors, including said chapter of the Acts of 1784.

The Susquehanna Power Company is the successor, by ownership of all of the stock and by deed of all of its property, of the said Proprietors; and has by the construction of its complete unit and dam and pool made such navigation

possible, and has in all respects complied with the provisions of said Act of 1908. It is therefore now entitled to that privilege of tax exemption for such part of its land and structures as are necessary for the maintenance of said pool and complete unit as an aid to navigation; and requests the State Tax Commission to rule that if it finds the facts hereinbefore set forth to be true, that that no part of its complete unit, project area and dam and pool and the works necessary for the maintenance thereof, are subject [fol. 471] to assessment and taxation in these proceedings.

9. That any assessment and taxation by said State or County of any part of said complete unit and project area or of said dam or pool or of the said canal locks and other works with their profits and advantages will deprive said company of its property against the law of the land under Article 23 of the Declaration of Rights of Maryland and without due process of law under the 14th Amendment of the Constitution of the United States.

10. That the bridge constructed across the Susquehanna River for the use of the State of Maryland or State Roads Commission under the deed and agreement which has been offered in evidence, and the roads laid out and constructed for the State of Maryland and County Commissioners on the property of The Susquehanna Power Company, are not subject to assessment and taxation by the County Commissioners of Harford County or by this Board in this proceeding; and the value thereof should not be included in any assessment of the real estate of the Susquehanna Power Company in said county.

BEFORE STATE TAX COMMISSION

In re Appeal of SUSQUEHANNA POWER COMPANY

Harford County, 1929. No. 23

RULINGS ON PRAYERS SUBMITTED BY SUSQUEHANNA POWER COMPANY

1. Granted.

2. Granted.

3. Refused.

4. As the function of the State Tax Commission in this case is to make an assessment de novo, the propriety of [fol. 472] the methods employed by the County Commissioners in making the assessment appealed from, and of the expert advice upon which they may have acted, is a purely academic question. This prayer is therefore refused.

5. Neither the Federal license nor the State franchise is the subject of assessment by the County Commissioners or State Tax Commission. So far, however, as the prayer may be held to assume that the property of the Power Company must be assessed at such value as it would have if there were no license or permission of the Federal or State governments to use and operate the same as a power plant, the prayer is refused.

6. Granted, except so far as the prayer may be held to assume that the land and structures of the Power Company located in Harford County must be assessed at such value as they would have if not contiguous to, and used or useful in connection with, the land and structures located in adjoining territory.

7. Refused.

8. Refused.

9. Refused.

10. Granted.

BEFORE STATE TAX COMMISSION

ORDER REVERSING ACTION OF COUNTY COMMISSIONERS

Ordered, by the State Tax Commission of Maryland, this 11th day of October, 1929, that the action of the County Commissioners of Harford County in assessing the property described in this appeal is hereby reversed, and property assessed as follows:

Fifth District

Transmission system	$94,800
Railroad, 3.16 miles at $5,000 per mile	15,800
Water towers	4,500

2 Dwelling houses	19,000
[fol. 473] 3.58 Acres of islands at $50 per acre	179
569.81 Rocky hillside land at $20 per acre	11,396
888.67 Acres woodland at $30 per acre	26,460
690.77 Acres tillable land at $50 per acre	34,538
Buildings	15,840
2,110 Acres (more or less) submerged land	2,349,300
Power house and portion of dam located in Harford County	9,413,350
Second District	
114.99 Acres land and buildings	3,650
3.35 Miles railroad at $5,000 per mile	16,750
Sixth District	
64.47 Acres land and buildings, less 48.7 acres of land used by railroad	10,770
Railroad warehouse	750
1.31 Miles railroad at $5,000 per mile	6,550
Total	$12,023,633

(Signed) Jessie D. Price, (Signed) E. O. Weant, (Signed) Oscar Leser, Commissioners.

IN CIRCUIT COURT OF HARFORD COUNTY

ORDER AFFIRMING ACTION OF STATE TAX COMMISSION

The hearing on the appeal in the above entitled case having been fully argued by the counsel for the respective parties, it is thereupon this 29th day of November, 1929, by the Circuit Court for Harford County—

Ordered, That the action of the State Tax Commission in assessing said property be and the same is hereby affirmed.

Walter W. Preston.

[fol. 474] IN CIRCUIT COURT OF HARFORD COUNTY

NOTE OF APPEAL TO THE COURT OF APPEALS

D. G. Wilson, Esq., Clerk of said Court:

Enter an appeal to the Court of Appeals of Maryland from the Order of the Circuit Court for Harford County,

dated the 29th day of November, 1929, that the action of the State Tax Commission in assessing said property, be and the same is hereby affirmed.

Chas. McH. Howard, S. A. & F. R. Williams, Attorneys for the Susquehanna Power Company, Appellant.

STATE OF MARYLAND,
Harford County, sct:

I hereby certify that on this 5th day of December, in the year 1929, before me, the subscriber, a Notary Public of the State of Maryland, in and for Harford County, duly commissioned and qualified and residing at Bel Air, personally appeared the above-named Stevenson A. Williams, Director of The Susquehanna Power Company, and made oath in the presence of Almighty God, that the appeal from said Order to the Court of Appeals of Maryland, is not taken for delay.

As witness my hand and notarial seal.

Lucille Gray, Notary Public. (Notarial Seal.)

(Filed Dec. 6, 1929.)

[fols. 475 & 476] IN CIRCUIT COURT OF HARFORD COUNTY

Appeal of THE SUSQUEHANNA POWER COMPANY from Decision of the State Tax Commission of Maryland in the Matter of the Assessment for Taxation of the Real Estate and Property of said Company Located in Harford County, Maryland

Appeal from the State Tax Commission

BILL OF EXCEPTIONS AND ORDER SETTLING SAME—Filed Jan. 21, 1930

This appeal came on to be heard, and the Court had before it the transcript of the record before the State Tax Commission, and the questions involved in the protest of The Susquehanna Power Company, the petition for appeal and request for rulings. After oral argument by the counsel for the respective parties, a brief was submitted and the questions involved were duly considered, thereupon

the Court passed an order over-uling the questions raised by The Susquehanna Power Company and affirming the order of the State Tax Commission, whereupon The Susquehanna Power Company excepted to the said ruling and prayed the Court to sign and seal this, its Bill of Exceptions, which is accordingly done this 21st day of January, in the year 1930.

Walter W. Preston. (Seal.)

IN CIRCUIT COURT OF HARFORD COUNTY

ORDER OF TRANSMITTAL

It is thereupon ordered by the Court here that a transcript of the Record and Proceedings in the Appeal aforesaid with all things relating thereto be transmitted to the Court of Appeals of Maryland and the same is transmitted accordingly.

Clerk's certificates to foregoing transcript omitted in printing.

[fol. 477] IN COURT OF APPEALS OF MARYLAND, APRIL TERM 1930

General Docket No. 38

THE SUSQUEHANNA POWER COMPANY

vs.

THE STATE TAX COMMISSION OF MARYLAND

Appeal from the Circuit Court for Harford County

NOTICE OF APPEAL—Filed August 1, 1930

To the State Tax Commission and Thomas H. Robinson, Attorney General of Maryland; Robert H. Archer, Assistant Attorney General of Maryland, and Charles H. MacNabb, attorneys for the said appellee, the State Tax Commission of Maryland:

This is to notify you that the Appellant will require the Clerk of the Court of Appeals of Maryland to duly certify

to the Clerk of the Supreme Court of the United States the entire printed record in said suit, and all proceedings in said suit subsequent to the filing of said record in said Court of Appeals, and also the original citation, giving notice to the Appellee of the allowance of said appeal.

Wm. Clarke Mason, S. A. & F. R. Williams, Attorneys for the Appellant.

Service of the above notice and præcipe admitted this 1st day of August, 1930.

Thos. H. Robinson, Robert H. Archer.

[fol. 478] In Court of Appeals of Maryland.

[Title omitted]

Petition for Appeal—Filed July 10, 1930

To the Honorable Carroll T. Bond, Chief Judge of the Court of Appeals of the State of Maryland:

The Petition of The Susquehanna Power Company, a body corporate, Appellant in this Court, and Petitioner and Appellant in the Circuit Court for Harford County, from a decision and Order of the State Tax Commission of Maryland, on appeal pending before the said Commission from an Order of the County Commissioners of Harford County, in the matter of the assessment for taxation of the real estate of The Susquehanna Power Company, respectfully shows:

I

That as fully appears from the record in this cause, this cause is and was in the Circuit Court for Harford County and in the Court of Appeals of Maryland, a suit wherein was drawn in question, the validity of certain Statutes of the State of Maryland, namely, Statutes relating to the County Commissioners of Harford County, and an appeal therefrom to the State Tax Commission of Maryland, and also relating to the said State Tax Commission of Maryland, and certain Orders of the said the County Commis-

sioners of Harford County and the State Tax Commission of Maryland, purporting to have been made in pursuance of said Statutes on the ground that the said Statutes, including the said decision and Orders, were and are repug- [fol. 479] nant to the Constitution of the United States, and the final judgment of the Court of Appeals of Maryland, made and entered in said cause on the 12th day of June, 1930, was and is a decision in favor of the validity of said Statutes, including said Orders made pursuant to the authority thereof.

II

Your Petitioner, for the reasons specified in the Assignment of Errors, which is filed herewith, conceives itself aggrieved by said final judgment made and entered by the said Court of Appeals on June 12th, 1930.

Wherefore your Petitioner prays that an appeal may be allowed herein from the Court of Appeals of Maryland to the Supreme Court of the United States, and that an Order may be passed fixing the amount of the bond on said appeal.

Wm. Clarke Mason, S. A. & F. R. Williams, Attorneys for Appellant.

[fols. 480 & 481] In Court of Appeals of Maryland

[Title omitted]

Order Allowing Appeal—July 10, 1930

And now, to wit, on July 10, 1930, it is ordered that an appeal from the Court of Appeals of Maryland to the Supreme Court of the United States, be allowed as prayed, upon the filing of a bond in the sum of Five hundred dollars ($500), with good and sufficient security, and that the United States Fidelity and Guarantee Company, a Maryland Corporation, is accepted as surety on said bond and said bond is now approved.

Carroll T. Bond, Chief Judge of the Court of Appeals of the State of Maryland.

[fol. 482] IN COURT OF APPEALS OF MARYLAND

[Title omitted]

ASSIGNMENT OF ERRORS—Filed July 10, 1930

And now comes The Susquehanna Power Company, a body corporate, Appellant in the above entitled cause, in the Court of Appeals of Maryland, Petitioner and Appellant in the Circuit Court for Harford County, and for its Assignment of Errors shows:

I

That the Court of Appeals of Maryland erred in affirming the judgment of the Court below whereby real property owned by the Appellant is assessed for taxation in the State of Maryland at a valuation given to it as "submerged lands", which includes a value attributable to the waters of the Susquehanna River flowing over said lands in which the Appellant has no right of property, and imposes upon the property of the Appellant a tax without due process of law contrary to the Constitution of the United States of America and the Fourteenth amendment thereof.

II

That the Court of Appeals of Maryland erred in affirming ing the judgment of the Court below whereby real property owned by the Appellant is assessed for taxation in the State of Maryland at a valuation given to it as "submerged lands", which includes a value attributable to a License granted to the Appellant by the Federal Power Commission pursuant to the Acts of Congress of the United States of America, which value attributable to the Federal License cannot be included for taxation by the State of Maryland [fol. 483] or the political subdivisions thereof, and the tax thus imposed deprives this Appellant of its property without due process of law contrary to the Constitution of the United States of America and the Fourteenth Amendment thereof.

III

That the Court of Appeals of Maryland erred in affirming the judgment of the Court below approving the assess-

ment of a tax upon real property of the Appellant described as "submerged lands" which form the bed of the Susquehanna River and the waters thereof impounded by the dam constructed by the Appellant as a licensee under a Federal License granted by the Federal Power Commission, which submerged lands, at the time of the assessment thereof for taxation by the State of Maryland, and its political subdivisions and subsequent thereto, were in use by the Appellant as an agent of the United States of America and an instrumentality to promote navigation upon a navigable river which is a highway of interstate commerce.

IV

That the Court of Appeals of Maryland erred in entering a judgment whereby property of the Appellant a unit under the License granted by the Federal Water Power Commission and an agent and instrumentality of the United States to promote the navigation of an interstate river is assessed for taxation for state and county purposes.

V

That the Court of Appeals of Maryland erred in affirming the judgment of the Court below whereby the assessment of real property of the Appellant for taxation in the State of Maryland is arrived at by a different method and upon a higher value than other real property owned by other taxpayers on the same tax roll or located in the same taxing district, and thereby the property of the Appellant will be taken without due process of law contrary to the Constitution of the United States of America and the [fols. 484 & 485] Fourteenth Amendment thereof.

Wherefore the Appellant and Petitioner prays that the said judgment of the Court of Appeals of Maryland made and entered on the 12th day of June, 1930, be reversed, and the said Court may be directed to enter a judgment in favor of the Appellant and Petitioner.

Wm. Clarke Mason, S. A. & F. R. Williams, Attorneys for Appellant.

[fol. 486] Bond on appeal for $103,000, approved and filed July 10, 1930, omitted in printing.

[fol. 487] Citation, in usual form, showing service on Thos. H. Robinson et al., filed July 15, 1930, omitted in printing.

[fol. 488] IN COURT OF APPEALS OF MARYLAND

[Title omitted]

DOCKET ENTRIES

Appeal from the Circuit Court for Harford County.
Filed March 21st, 1930.
June 12th, 1930, Order affirmed with costs.
Opinion filed. Op., Offutt, J. To be reported.

Bills of costs omitted in printing.

Clerk's certificate to foregoing paper omitted in printing.

[fol. 489] IN COURT OF APPEALS OF MARYLAND, APRIL TERM, 1930

No. 38

THE SUSQUEHANNA POWER COMPANY

vs.

THE STATE TAX COMMISSION OF MARYLAND

OPINION—Filed June 12, 1930

Judge OFFUTT delivered the Opinion of the Court:

[fol. 490] The Susquehanna River, prior to the construction of the Conowingo dam, flowed in a series of pools and rapids over a rocky bed through a narrow basin or valley from the McCall's Ferry dam in Pennsylvania to Shure's Landing in Maryland, a distance of some fourteen miles. In that distance the fall of the river was about one hundred

feet. That fall, the shape of the basin through which the river flows, and the volume of its flow, combined to give to that basin a peculiar value because of its potential utility for the construction of an artificial lake or pool which might be controlled and applied to the manufacture of electric energy.

Many years ago a group of men, who had the vision to see the power latent in that little valley had also the genius to conceive a plan for converting the possibilities patent to them into living fact, and the resource to carry their plans to a successful fruition. And as a result of their efforts there was substantially completed in 1928 the plant of the Susquehanna Power Company, consisting of a dam at Shure's Landing, a lake or pool containing the waters impounded by that dam, the land covered by its waters, and land adjacent thereto, power houses, structures and ma- [fol. 491] chinery to convert the water power into electric energy, transmission lines to transmit the energy thus generated to its market, and such other structures, tools, machinery, and equipment as are appropriate or convenient to the production and sale of electric energy by that plant. So much of the plant as has been completed is capable of generating electric energy equivalent to 385,000 h. p. and when four additional units for which foundations have been constructed are added it will, in the opinion of George P. Roux, the company's engineer, be the largest hydro-electric project in the world.

On September 25th, 1928, so much of the project as was to be immediately constructed was nearing completion, and on that day the County Commissioners of Harford County, addressed to the Susquehanna Power Company and Mr. Stevenson A. Williams, its attorney, a notice stating that they had placed on the property of the company in Harford County, the following assessment:

"Electrical transmission system	$109,293
Land submerged and rights	6,622,816
Buildings (dam and power house)	12,003,156
Total	$18,735,265"

and that they would hear objections to that assessment on October 4th, 1928. Following that notice, on the day named,

objections were filed by the company and it was heard as [fol. 492] to them by the County Commissioners. Those objections were in part based upon the contention that the description given by the County Commissioners of the property assessed was too "vague, indefinite and general", and in response to that objection the County Commissioners in their answer itemized the assessment as follows:

"Electric transmission system in Harford County, exclusive of Delta line		$109,293
Transmission line, Delta-Conowingo Dam:		
4.16 Miles wire at $40	$166	
117 Poles at $6.25	1,043	
2 Towers at $100	200	
		1,409
Portion of dam located in Harford County, and power house		12,003,156
Railroad:		
3/16 Miles at $10,000	$31,600	
132.37 Acres of land	4,500	
		36,100
Water towers		4,500
2 Dwelling houses		19,000
Islands, 3.58 acres at $50.00		175
Rocky hillside, 569.81 acres at $20.00		11,396
Wooded land, 882.67 acres at $30.00		24,460
Tillable land, 690.77 acres at $50.00		34,538
Buildings		15,840
Submerged lands, 2,110 acres, and rights therein		6,620,786
		$18,882,653

The assessment on the submerged lands, amounting to 2,110 acres and rights therein includes all the land that was submerged before and is now submerged by the construction of the dam, and is based on figures submitted by The Susquehanna Power Company."

From that assessment the company appeal to the State [fol. 493] Tax Commission of Maryland which after a hearing reversed the action of the County Commissioners of Harford County, and assessed the property as follows:

Transmission system	$94,800
Railroad, 3.16 miles at $5,000 per mile	15,800
Water towers	4,500
2 Dwelling houses	19,000
3.58 Acres of islands at $50 per acre	179
569.81 Rocky hillside land at $20 per acre	11,396
888.67 Acres woodland at $30 per acre	26,460
690.77 Acres tillable land at $50 per acre	34,538
Buildings	15,840
2,100 Acres (more or less) submerged land	2,349,300
Power house and portion of dam located in Harford County	9,413,350
Second District	
114.99 Acres land and buildings	3,650
3.35 Miles Railroad at $5,000 per mile	16,750
Sixth District	
64.47 Acres of land and buildings, less 48.7 acres of land used by railroad	10,770
Railroad warehouse	750
1.31 Miles railroad at $5,000 per mile	6,550
Total	$12,023,633"

Thereafter the company filed in the Circuit Court for Harford County, a petition in the nature of an appeal from the order of the State Tax Commission, in which, referring to the assessment made by that Commission, it alleged: that it was illegal and erroneous.

(a) Because said submerged land, and any rights of your [fol. 494] petitioner therein, constitute an essential or integral part of its 'complete unit' and 'project area' or of the pool to be formed by it on the Susquehanna River under the terms of the license from the Federal Power Commission above mentioned, and the same are exempt from assessment and taxation for State and County purposes, because in constructing, maintaining and operating the same under said license your petitioner is acting as an agency or instrumentality of the Federal Government for

the promotion of navigation and development of the navigable capacity of the water power of said river, and the taxing by the State of Maryland or by said county of such part of its property will operate to defeat the objects and purposes of said license and the rights reserved to the United States thereunder.

(b) Because in so valuing and assessing said submerged land, at such excessive rate, the Tax Commission of Maryland arrived at such excessive valuation in an erroneous and illegal way, by including in such valuation the value of your petitioner's franchises (Federal or State) and also by including in such valuation elements of value which belong to your petitioner's property outside of Harford County and outside of the State of Maryland, thereby arriving at an excessive valuation or assessment for the sub-
[fol. 495] merged land owned by your petitioner which is now located in and a part of the bed of such pool, formed by the waters in the Susquehanna River.

(c) Because in so valuing and assessing submerged lands owned by your petitioner, which were at the time of the said assessment and are now a part of the bed of the Susquehanna River, the State Tax Commission of Maryland included in said assessment, to give it such value, the waters of the Susquehanna River, which waters at the time of the said assessment were not the property of your petitioner and were not subject to taxation by the State of Maryland.

(d) Because said Commission at said hearing refused to grant the rulings on legal points or prayers submitted by your petitioner at said hearing, as authorized by law, and numbered 3, 4, 5, 7, 8 and 9 (a copy of which said prayers and the rulings thereon is attached to this petition as part thereof and marked Exhibits B and C), and refused to followed the legal principles laid down in said prayers or requests and arrived at said valuation or assessment in disregard thereof."

That appeal was heard upon a transcript of the proceedings before the State Tax Commission, and upon the con-
[fol. 496] clusion of the hearing, the order of the Commission was affirmed. This appeal is from that order.

The appeal to the Circuit Court for Harford County did not challenge the propriety of the entire assessment made

by the County Commissioners, but involved only the item of 2110 acres of land submerged by the water impounded by the dam, and this court on this appeal is limited to a consideration of that item alone.

The appeal raises three questions which may be thus stated: (1) Is the property taxable at all by the State of Maryland, (2) if it is, was the assessment validly made, and (3) if not, can the mischief be remedied in this proceeding. These three questions will be considered in their order.

(1) The appellant, hereinafter referred to as the Power Company, contends that the property is exempt from taxation by the state (a) because it is a Federal agency, (b) because it is covered by an exemption granted to the Proprietors of the Susquehanna Canal by Ch. 66 of the Acts of 1874, and (c) because the Power Company has no "absolute title" to the submerged lands, that it acquired from the state by Ch. 268 of the Acts of 1908 the right to erect [fol. 497] its dam and lay its pool upon the bed of the river, "a declared public highway," that therefore the assessment was not upon the submerged land but upon the flowing water of the river, which cannot be validly assessed for the purposes of taxation.

1, a. The claim that the property is exempt from taxation as a Federal agency is based upon the fact that the Power Company was licensed by the Federal Power Commission to construct and operate its project on the Susquehanna river for a term of fifty years. That license was predicated upon the assumption that that part of the river upon which the project is located is a navigable stream, and subject to the jurisdiction of the Commission. That it is a navigable stream within the definition of "Navigable Waters" found in the "Water Power Act", Ch. June 10th, 1920 c 285, sec. 3 Barnes Federal Code Cum. Sup. 1919-1924 sec. 9531 c, in view of appellants' concessions may for the purposes of this case be assumed. Whether the Susquehanna River is in law or in fact navigable is a question not presented by this record and not considered by this court, and nothing in this opinion contained is to be construed as in any sense determining that question or determining the validity of any legislation relating thereto. But assuming for the purposes of this case that the project is sub-

ject to the Federal Water Power Act, it is also subject to the condition stated in sec. 14 of that Act sec. 9531 n Barnes' Code Cum. Sup. 1919-1924 that upon or after the expiration of the license the United States shall have the power to take it over upon the payment of just compensation as defined in that section. Both by the licensing agreement and the Water Power Act the Federal Power Commission is given extensive and important regulatory and supervisory [fol. 498] powers over the construction, maintenance, operation, financing rates and service of the project coterminous with the license, and the licensee agreed except as otherwise authorized that it would "retain the possession of all project property covered by this license as issued or as hereafter amended, including the project area, the project works, and all franchises, easements, water rights, and rights of occupancy and use; and that none of such properties valuable and serviceable to the project and to the development, transmission, and distribution of power therefrom will be voluntarily sold, transferred, abandoned, or otherwise disposed of without the approval of the Commission; Provided, That a mortgage or trust deed or judicial sales made thereunder, or tax sales, shall not be deemed voluntary transfers within the meaning of this article."

It is also undisputed that the Power Company is a Maryland corporation, engaged in a public service, maintained and operated for private gain and the immediate question is whether such a corporation under the conditions stated is such an agency of the Federal government as to place its property beyond the taxing power of the State in which its property is located.

Although the phrase of the Maryland Bill of Rights stating the just and salutary principle, that "every person in [fol. 499] the State or person holding property therein, ought to contribute his proportion of public taxes for the support of the government, according to his actual worth in real or personal property" was omitted from the article as amended by Chapter 390 of the Acts of 1914 ratified November 2nd 1915, yet it is implicit in the following language of the Article as amended: "and all taxes hereafter provided to be levied by the State for the support of the general State Government, and by the counties and by the City of Baltimore for their respective purposes, shall

be uniform as to land within the taxing district, and uniform within the class or sub-class of improvements on land and personal property which the respective taxing powers may have directed to be subjected to the tax levy." And while it is axiomatic that no tax may be imposed by a state upon property of the Federal government, or upon agencies of that government when the effect of the tax would be to impair the efficiency of such agencies "in performing the functions by which they serve" it, Cooley on the Law of Taxation 4th Ed. secs. 606, 607, that exemption does not exist in the absence of the reasons for the rule. So that the right of the Power Company to have its property in this state exempted from taxation by the state depends upon two factors, one, whether it is a federal agency, the other [fol. 500] whether if it is, such a tax would impair its efficiency in discharging functions by which it serves the Federal government. For as a person owing property in the state it rests under the obligation common to all holding property therein, of contributing its proportionate share of the public taxes for the support of the government, unless such contribution would to some extent impair its capacity to perform duties and functions imposed upon it as a Federal agency.

But assuming that it is a Federal agency after careful consideration of the very forcible and able arguments offered in support of it, we are unable to find any substantial support for the Power Company's contention that it is such a Federal agency as is necessarily exempt from State taxation, or that the payment to the state of just and reasonable taxes on its property will to any extent prevent it from discharging every duty and performing every function imposed upon it either by its agreement or by law with respect to the Federal government.

The mere fact that the impounding of water by its dam may to some extent facilitate navigation for a short distance, is incidental and secondary to its primary purpose of manufacturing and selling electric energy for profit, and it is not required to do any act or thing in aid of the Fed- [fol. 501] eral government except that it is permitted or licensed to complete a project for its own profit which incidentally may effect beneficially or otherwise the navigability of the river. But it is contended that the United

States has a "power coupled with an interest" in the project. Just what is meant by that expression or how it affects the question under consideration is not apparent. That the Federal government has an interest in the project and that it may exercise certain powers in respect to its operation and maintenance in aid of navigation cannot well be denied. For "whenever" the United States desires to install navigation facilities, the licensee is required to grant to it such of its lands and rights of way and permit such control of its pools as may be required for that purpose, and as already stated the United States may upon the expiration of the term of the license take over the project upon the payment of just compensation therefor. It has therefore in a sense an interest in the project, and certain optional powers in respect to its control and operation. But such powers and interest are nothing more than a consideration for the license, and do not in themselves constitute the licensee a federal agency. The interest is essentially reversionary, and the powers, except such as refer to service and rates are for the most part contingent upon an [fol. 502] event which may never occur, to wit, the installation of navigation facilities by the Federal government. The principal and controlling facts are that the licensee desired to establish on the Susquehanna river a power project to make money for its stockholders, that to accomplish that purpose it required a Federal license, and that the Federal government in consideration for that license exacted of the licensee certain concessions which may be valuable or meaningless accordingly as they may be affected by conditions which cannot now be predicted. But even though the licensee is required to do every act required by the license, there is nothing in the nature or the extent of its obligation which can support the inference that the payment by it of its proportionate share of the public taxes will in any degree impair its capacity to render to the United States the full service stipulated as a consideration for the license.

That the numerous and extensive power projects located on navigable waters, licensed by the Federal Power Commission, in the aggregate representing vast capital expenditures, and earning for their proprietors liberal returns on their investment, should under the conditions stated be regarded as Federal agencies and as such exempt

[fol. 503] from the burden of taxation common to all who receive the benefits and the protection of State governments it is imposed to support would be a wholly unreasonable and arbitrary conclusion. And no such result appears to have been contemplated by Congress in the enactment of the Water Power Act, for not only does it throughout characterize persons authorized to construct power projects under its terms as "licensees", but it inferentially concedes that the propery of a licensed project may be taxed, for in sec. 8, Barnes Code Cum. Sup. 1919-1924 sec. 9531 h, in prohibiting the voluntary transfer of any license or rights thereunder granted, it exempts from the scope of the term "voluntary", tax sales. Nor as we understand it is it the policy, if it is within the power of the Federal government to embarass and injure the states by depriving them of taxes which should be applied to the support of their governments merely to increase the profits of money making projects which the states themselves have created. In our opinion therefore the Power Company is not such a Federal agency as is by its very nature exempt from state taxation. Its capacity to perform such duties and functions in the service of the Federal government as are imposed upon it either by its own acts or by law will not be impaired by the imposition upon it of its proportionate [fol. 504] share of the public taxes of the state, and it is not exempt from taxation by the state. Cooley on Taxation 4th Ed. sec. 607; Thompson vs. Union Pac. R. Co., 9 Wal. 591, Union Pac. R. R. Co. vs. Peniston 18 Wal. 5; 26 R. C. L. 105; Balto. Shipbuilding etc. Co. vs. Balto. 195 U. S. 375, 97 Md. 97, 1 b. The Proprietors of the Susquehanna Canal was incorporated by Ch. 23 of the Acts of 1783, for the purpose of constructing a canal not less than thirty feet wide and three feet between Love Island and tidewater in the Susquehanna river. Chapter 66 of the Acts of 1784 amended that charter and among other things provided: "That the said canal, locks and other works, with their profits and advantages respectively, shall be and the same are hereby vested in the proprietors of the Susquehanna Canal, their heirs, successors and assigns, forever as tenants in common, according to their respective shares, and the same shall be deemed real estate, and shall not be subject or liable to pay any tax, imposition, duty or assessment, whatsoever; * * * that is to say, provided always,

that such exemption from taxation shall extend to such works as relate merely to, and are necessary for, the navigation of said canal." Chapter 99 of the Acts of 1797 declared that "the bed of the river Susquehanna, from the [fol. 505] Maryland line to tide water, shall be considered a public highway, free for any person or persons whatever to work thereon in clearing the obstructions to its navigation; provided always, that nothing herein shall be taken or considered to permit any person or persons whatsoever to do any act repugnant to the power given by law to the said corporation over the waters of said river, so far as the same may be necessary for the purpose of supplying the said canal, and the water-works thereon, or repugnant to the power given by law of excluding others from cutting any other canal or canals along the side; without the margin of the said river, to the injury of the said canal." The canal company some time prior to 1817 found itself in financial difficulties and its property was sold at the instance of the Bank of Baltimore by the Sheriff of Cecil County to Samuel Sterrett acting for himself and others. There being some doubt as to the validity of that sale, the legislature by Chapter 150 of the Acts of 1817 authorized a majority of the stockholders to sell the canal property and confirmed and transferred to such persons as might purchase it the privileges and immunities of the original company, and incorporated such prospective purchasers under the same name. Under that authority the directors of the company by and with the consent of a [fol. 506] majority of its stockholders sold its property to Robert Oliver and others. The stock in the company constituted by these purchasers was subsequently acquired by the McCall's Ferry Power Company and by it assigned to the appellant. In 1894 the property of the canal company was sold under mortgage foreclosure at the suit of the state, to Eben J. D. Cross, and through him by various mesne conveyances it too has become vested in the appellant. The Canal property at one time contained about 280 acres of land along the river shore in Cecil county, but from time to time in different parcels 127 acres of that total were conveyed away.

The record fails to disclose when the canal was completed, how long it was operated, or indeed whether it was ever successfully operated. Its career was brief, gloomy

and while "some or the remains of it" were until the construction of appellant's dam still visible, the canal itself has long been abandoned, and a part of it until the construction of the dam was commenced, used by the Columbia & Port Deposit Railroad Company for its railroad, and all of it is now submerged.

The expressed purpose and reason for the exemption declared in Chapter 66 of the Acts of 1784 was to aid the operation and maintenance of the canal, and it was limited [fol. 507] to "such works as relate merely to, and are necessary for, the navigation of the canal." The canal has long since disappeared, its value as a means of transportation has been destroyed by later systems such as the railroad and the automobile truck, and the canal company has for many years existed for no other apparent purpose than to serve as a repository for certain property rights which might prove valuable for other uses. The contention that under such circumstances the original exemption still exists and inures to the benefit of such persons as may from time to time hold property under its franchise without regard to the use to which such property is applied verges on absurdity. But appellant's counsel meet that obvious criticism by the ingeni-us suggestion that the Power Company has "canalized" the river. The record however, shows that it has not "canalized" the river, but that on the contrary it has erected between tide water and the upper reaches of the Susquehanna a barrier in the form of a dam about one hundred — in height nor does the fact that its dam forms a pool of backwater some fourteen miles long on which boats may float, make the river a canal. The Company was not chartered primarily to operate a canal, but to manufacture and sell electric power, and while it is also designated in Chapter 268 of the Acts of 1908 as a "slack water navigation" company and empowered to cre- [fol. 508] ate "a safe and practical navigation up and down said river" either by backwater or by "means of a canal or canals along the margin thereof", there is nothing in the record which indicates even remotely that it has exercised or ever intends to exercise that power but a more reasonable inference is that if the river ever is canalized it will be by the Federal government and not by the appellant. Under such circumstances it is needless to inquire into such questions as whether the appellant in fact ac-

quired all the corporate immunities of the Proprietors of the Susquehanna Canal, or the extent of those immunities, for under no circumstances could they extend to or affect property devoted to the uses to which appellant's property is now applied.

1.c. The third ground on which the appellant claims that so much of its property as is involved in this appeal is exempt from taxation is not clear. In its brief it states that "the pool and declared public highway cannot be assessed separately as 'submerged lands'." In its petition filed in the Circuit Court for Harford County it alleged that the assessment was illegal: "Because in so valuing and assessing submerged land- owned by your petitioner which were at the time of the said assessment and are now a part of the bed of the Susquehanna River, the State Tax Commis- [fol. 509] sion of Maryland included in said assessment, to give it such value, the waters of the Susquehanna River, which waters at the time of the said assessment were not the property of your petitioner and were not subject to taxation by the State of Maryland". That is its contention appears to be not so much that the property is exempt, as that because of its nature it is not assessable. That contention rests upon two fallacies, one, that the submerged land cannot be treated as property separate and apart from the water which flows over it, the other that the land and water together constitute a "highway" and as such cannot be taxed.

Manifestly the land can be considered as a thing separate and distinct from the water over it, just as a bowl containing milk may be considered as separate and distinct from its contents, and both the bowl and the milk may be separately owned. That the bed of a navigable steam above tidewater may be the subject of private ownership was decided in this state as early as Browne vs. Kennedy 5 H & J 195. In that case speaking to that point Judge Chase for the court said: "I have do doubt the king by the charter to the proprietary, granted all the rights he enjoyed within the limits of the charter, subject to such savings and exceptions as are contained therein, and that the proprietary had a right [fol. 510] to grant the land, covered by a navigable river, without interfering with or affecting the public or common right of user for the purpose of navigation and fishing".

And in a separate opinion in the same case Judge Buchanan added: "The subject has, *de communi jure,* an interest in a navigable stream, such as a right of fishing and of navigating, which cannot be abridged or restrained by any charter or grant of the soil or fishery since magna charta at least. But the property in the soil may be transferred by grant: Hargarave's Law Tracts 17, 22, 36, 37; subject, however to the *jus publicum,* which cannot be prejudiced by the *jus privatum* acquired under the grant." See also Wilson vs. Inloes 11 G & J 359.

The other point is that the land supports the water, that the water constitutes a highway, that therefore both the land and the water are integral parts of the highway, that a highway cannot be taxed and that therefore the land cannot be taxed. But the fallacy of that reasoning is that while the river is a highway, it is not the kind of a highway that requires its exclusive appropriation to public uses, and the submerged land may possess a potential utility which may not be affected by the use of the water flowing over it as a public highway. And that distinction is graphically illustrated by the facts of this case. The appellant used the [fol. 511] submerged land to impound water to furnish power to turn the wheels of its generating units. But the use of the impounded water for navigation will not on the one hand lessen the power which it delivers for that use nor will the fact that it delivers power affect its use for navigation. Both uses are complementary, neither is exclusive, both are valuable one is essentially public in its nature, not the subject of private ownership, and therefore not taxable, while the other is an incident of the ownership of land submerged by the pent up water, which land may be privately owned and because of its utility for impounding water may be valuable and may be taxed. City of Lowell vs. Co. Com. of Middlesex 9 L. R. A. 363. Farnham on waters secs. 432, 433, Cooley on Taxation secs. 568, 1065, 1162.

2. Assuming that its submerged lands are taxable, appellant further objects that the assessment of which it complains was not validly made. The basis of that objection is the contention that the Commission in valuing the property was controlled by false and illegal rules and standards.

The assessment was made in 1928, and the objection must be considered in the light of the law as it stood then, and not as amended by Ch. 226 of the Acts of 1929.

The State Tax Commission was created by Ch. 841 of the Acts of 1914, and by that statute was given "the final de-[fol. 512] termination of assessments of all property in all the Counties, Cities, Towns and Villages of the State, to the end that all taxable property shall be placed upon the assessment books and equalized between persons, firms and corporations in all the Counties, Districts, Cities, Towns and Villages of the State, so that all persons, firms, and corporations shall be assessed alike for like kinds of property." 1924 Code Art. 81, sec. 241 par. 2. The same statute also provided that any taxpayer might demand a hearing before the County Commissioners as to the assessment of any property "and no formal proceedings shall be required", and that after such hearing any taxpayer assessed might appeal to the State Tax Commission, and that from decisions of that Commission there might be an appeal to court on "questions of law only". From this and other provisions of the law in force at the time appellant's land was assessed, it appears that in all questions of fact involved in tax appeals the decision of the State Tax Commission was final, and that in exercising its discretion it was not controlled by any statutory guides, rules, standards or restrictions except the broad general limitation that all persons should be assessed alike for like kinds of property. It was however, subject to the limitation as to uniformity [fol. 513] imposed by Art. 15 Maryland Bill of Rights, and to the implied limitation that it would value the land to be assessed according to the "best judgment" of its members and "with honest purpose". Cooley on Taxation sec. 1146. And it may be further implied from the provision allowing an appeal to court from its decisions on questions of law, that in valuing property it was bound to use legal standards and methods to ascertain its actual fair value.

In assessing appellant's property therefore the Commission was bound to ascertain and declare its actual fair value and to assess it accordingly, but in approaching that problem it was confronted by certain difficulties inherent in the nature of the undertaking. First, there was the absence of any general market for property of that character, because the value of the submerged lands depended so largely

upon the contingency that capital could be secured to install the expensive and extensive equipment necessary to develop their latent possibilities, that lands could not well be sold at their real value unless sold as a part of or as ancillary to an entire project which included the structures and machinery needed to realize their highest utility. Again because of the unique character of the project there was no other property within the state which was like it, which [fol. 514] could be used as a standard to measure its value.

Obviously the simplest and the most convenient method of valuing appellant's property would have been to value the project as an entire thing. But the Commission was prevented from adopting that method both by the statutory law of the State and by the fact that a part of the property used in connection with and as a part of the project lay in another state. It was therefore compelled to separate the project into its component parts and to value such parts separately. And while that method was more difficult and more inconvenient than valuing the project as a whole, it involved no injustice or unfairness to the taxpayer because after all the value of the whole was but the sum of the values of its parts, considered as parts of the whole. Nor does appellant object that the Commission valued its submerged lands as a separate item, but because, it contends, its valuation was excessive, and that it was excessive because it included elements which were not incidental to or a part of the land as land, and because in arriving at its conclusion the Commission was affected by considerations which properly had no relation to the value of the land, and excluded from its consideration facts and circumstances which should have had a vital and controlling influence on its action.

[fol. 515] The appellant sought to present the theory involved in those objections by certain prayers or instructions presented to the Commission at the hearing. Of these prayers, the Commission granted four, the first, second, sixth and tenth, and refused the others, the third, fourth and fifth which related to the immediate question, and the seventh, eighth and ninth which related to the exemption of the property from taxaton.

By its granted instructions, the Commission bound itself to assess appellant's property "at its fair assessable value" in the same manner as like property of individuals

would be assessed at "no higher proportion of valuation than other real property" located in the same taxing district "is assessed at", and excluded from its consideration, all real property or easements located outside of the state. In granting those instructions the Commission recognized every limitation imposed upon it by the statutory law of the state, but it is contended that in refusing appellant's third and fourth prayers, it nullified the granted prayers and in effect announced that it would not be bound by the principles stated in the rejected propositions. Appellee says, as one answer to that proposition, that as the Com- [fol. 516] mission was not bound to grant instructions at all that its action in refusing a prayer presents no question of law and is not reviewable on appeal. If the Commission had refused to consider the instructions at all, there might be some force in that position. But when it did actually consider them, and rejected some and granted others it seems too clear for argument that it did either accept or reject the legal propositions presented by the prayers, and it must be assumed, that its decision was influenced by the considerations which affected it in disposing of them, and that its action in respect to them presents a question of law which may be reviewed.

Appellant's third prayer, reduced to its lowest terms, states the proposition that the assessment of its submerged lands could not properly be made by estimating the value of its entire property in Maryland, and deducting from that total all items other than the submerged lands, but that it should be made by a "separate valuation of the different items of real estate". The prayer as drawn is needlessly confusing and might properly have been refused upon that ground. But passing that objection, the legal proposition which it embodies is unsound, if it was intended to present the theory that each parcel of land in Maryland [fol. 517] owned by the appellant, and used as a part of its project must be valued without reference to its relation to other parcels of its land used for the same purpose. Much of the submerged land had no intrinsic value considered as separate and independent parcels, for it was not adapted to many of the uses to which land is ordinarily put. It could not be tilled or grazed nor could it be utilized for residential or industrial purposes. But when all of these parcels were consolidated into a single unit which could be

utilized for the profitable production of power, they each acquired a definite actual value by reason of that relationship as parts of that unit. The contention that the land embraced in that valley or basin integrated as it is in a single unit which can be and is utilized to produce an enormously valuable water power, has no value aside from its quality as land, or that it should be considered as mere land without reference to its potential utility for the production of water power ignores the actual tangible facts. The unit could unquestionably be sold, and while its highest potential utility could not be realized without the expenditure of capital, the very fact that investors were willing to risk vast sums of money in developing that utility demonstrated its value.

The real value of these lands lies in the fact that they [fol. 518] form a natural basin through which a large river flows and within a few miles falls nearly one hundred feet, and that by the erection of a dam across the only outlet from that basin, the waters of that river may be impounded so as to generate nearly six hundred thousand horse power. To say that its utility for that purpose adds nothing to the value of the land, or, what in effect is the same thing to say that the value created by that utility cannot be taxed because such a tax would be imposed upon flowing water simply ignores the facts.

No one of the parcels into which the lands were formerly divided had any such utility considered apart from the other parcels which together formed the valley, for unless all were used none could be used. But when they were all gathered into a single hand, the potential utility latent in them became available and apparent. And for that reason when so held the entire tract of land was properly assessed as a unit. And since the prayer under consideration required the Commission to value separately the different items of real estate it was properly refused. Cooley on Taxation sec. 1146, 1152; Slatersville Finishing Co. vs. Greene L. R. A. 1917 F. 588 and note; Pingree vs. Co. Com., 102 Mass. 79, 80; Penobscot Chem. F. Co. vs. Inhabitants of the Town of Bradley, 59 Atl. (Me.) 87; Saco [fol. 519] Water Power Company vs. Inhabitants etc., 56 Atl. (Me.) 914; Cheshire vs. Co. Com., 118 Mass. 389; Brack vs. M. & C. C. of Balto., 125 Md. 382; N. C. Rwy. Co. vs. M. & C. C., 132 Md. 497. It therefore becomes unneces-

sary to consider at length the other proposition involved in it that the Commission could not properly assess the submerged land by first valuing all appellant's Maryland property and deducting from that aggregate value all other items. That method was irregular, Auburn vs. Young Men's Chr. Asso., 29 Atl. 922, and upon the facts peculiar to those cases the principle of the proposition involved was adopted in Con. Gas Co. vs. Balto., 105 Md. 43, 60; 101 Md. 541, although we do not understand that the expression used in the case in 105 Md.: that "We have thus distinctly held that the Appeal Tax Court cannot lawfully assess the easement by estimating by the unit rule or otherwise, the gross value of all the property and assets of every kind of the company, and then eliminating the other classes of property, and treating the residuum as the assessed value of the easement, but this does not determine how the easement should be assessed," went beyond the facts of that case. But as the prayer was properly refused for other reasons it cannot be assumed in the absence of any evidence on the point that the Commission adopted in this case that method of valuing appellant's lands.

[fol. 520] The appellant's fourth prayer was rightly refused because it unreasonably and improperly restricted the members of the Commission in the exercise of the discretion which the law gave them. In effect it stated that the valuation of the submerged lands made by Messrs. Gregory and Fuller, civil engineers of national standing, was "made by methods totally inappropriate for the determination according to law of the fair taxable value of the items so valued, and upon a legally erroneous basis and by legally improper conclusions; that therefore the assessment of all of said items, which was admittedly made in pursuance of such valuation thereof as so determined by said engineers, is erroneous, and should be vacated and set aside." There was no admission of any kind in the record that the assessment made by the Commission was "in pursuance" of the valuation made by such engineers, but on the contrary it appears that the assessment so made was less than half the valuation placed upon it by Gregory who alone testified as to the value of the land as a separate item. And there was no reason why the Commission should not in its endeavor to ascertain the value of the property have re-

ceived for what they were worth, the opinions of capable [fol. 521] and experienced engineers as to the value both of the entire project as well as of its component parts. For as stated in Cooley on Taxation sec. 1152: "In appraising a water-power for taxation, the assessor may consider all facts affecting the value—the original cost of the entire property, the quantity of land flowed, the magnitude of the power, the places where it may be used, the limitations upon its use, the income derived by way of rents, the expenses of maintaining it, or anything which might justly affect the judgment of a person desiring to purchase it". Nor can it be said as a matter of law that the assessment is erroneous. The Company itself supplied no information as to what the land actually cost it, but the Commission had before it a full itemized description of the entire project, its capacity and earning power, the testimony of the engineers for the County Commissioners and the Company as to its value, the amounts for which the property had formerly been assessed and some more or less meangingless testimony as to the value of farm land in the neighborhood. They were entitled to consider and weigh all of this information, and while they were not bound to accept all or any of it, at its face value, they were required in the light of it, as well as of all other pertinent facts known to them, [fol. 522] to value the property according to their best judgment, and there is nothing in the record to show that they did anything less than that, or, that their valuation was unjust or oppressive.

Appellant's fifth prayer states that neither its Federal license nor its Maryland franchises may be taxed, and then adds "neither is any method of valuation or assessment proper which includes in or adds to the valuation of such real estate as may be properly the subject of such assessment, the value of such franchises or either of them, or the capitalization of any income derived from the exercise of such franchises". The Commission after conceding that neither the license nor the franchises could be taxed, refused that instruction in so far as it "may be held to assume that the property of the Power Company must be assessed at such value as it would have if there were no license or permission of the Federal or State governments to use and operate the same as a power plant, the prayer is

refused." No objection to that ruling was specially pressed in this court and we have been able to discover none. Assuming that neither the license nor the franchises may be taxed, the value they gave to appellant's project by permitting it to operate is taxable. Manifestly if the appellant were not permitted to operate its project, much of its [fol. 523] property devoted to its purposes, would have a mere junk value, and the fact that it can operate is what gives its property its greatest earning power and utility. And as its value largely depends upon those elements, the effect of the license and franchises can not be ignored, Consol. Gas etc. Co. vs. Baltimore 101 Md. 541, in valuing its property.

3. In view of what has already been said the third point presented by the appeal, which is whether under the law in force in 1928 this Court can review the action of the Commission in refusing an instruction presented by a party at a tax hearing, need not be discusseed further than to say, that if the Commission consented to receive and consider instructions at all then its rulings as to them were, so far as they involved questions of law, reviewable. Moreover should it appear from any legitimate source that a valuation had been placed upon appellant's property in "a capricious, or whimsical or unwarrantable way", the valuation would not be an assessment at all, and the act of the Commission in making it could be reviewed as a matter of law. Con. Gas Co. vs. Balto. 101 Md. 558.

But there is nothing in this case to permit the inference that the appellant was injured by the action of the Com- [fols. 524-525] mission in valuing its property. The appellant did not itself offer any definite or positive valuation of its submerged lands. The evidence as to that value was largely that of warring experts who quoted figures endlessly in classifying various items of property as tangible or intangible in order to increase or decrease the value of this or that item or the company's real or personal property; of local real estate experts as to the value of farm and forest lands in the neighborhood; testimony as to the cost of isolated parcels of the flooded area; as to the cost of the entire project, its capacity and earning power, and as to the physical characteristics and utility of the submerged lands. With such assistance as this evi-

dence afforded the Commission was required to value appellant's submerged lands, and there is nothing in the record before us to enable us to say that its judgment was not fairly exercised, or that its conclusion was not correct. The order appealed from will therefore be affirmed.

Order affirmed with costs.

[fol. 526] IN SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS TO BE RELIED UPON AND DESIGNATION OF PARTS OF RECORD TO BE PRINTED—Filed Aug. 21, 1930

The above named Appellant hereby states its points to be relied upon, and its designation of the parts of the record to be printed, as follows, that is to say:

A

Points upon which it intends to rely:

Point 1. That the Court of Appeals of Maryland erred in affirming the judgment of the Court below (the Circuit Court for Harford County) whereby real property owned by the Appellant is assessed for taxation in the State of Maryland, at a valuation given to it as "submerged lands", which includes a value attributable to the waters of the Susquehanna River, flowing over said lands in which said Appellant has no right of property, and imposes upon the property of the Appellant a tax without due process of law, contrary to the Constitution of the United States of America, and the Fourteenth Amendment thereof.

Point 2. That said Court of Appeals of Maryland erred in affirming the judgment of said Court below, whereby real property owned by said Appellant is assessed for taxation in the State of Maryland at a valuation given to it as "submerged lands", which includes a value attributable to a license granted to said Appellant by the Federal Power Commission, pursuant to the Acts of Congress of [fol. 527] the United States of America, which value attributable to said Federal license cannot be included for taxation by the State of Maryland, or any political sub-

divisions thereof, and the tax thus imposed deprives said Appellant of its property, without due process of law, contrary to the Constitution of the United States of America, and the Fourteenth Amendment thereof.

Point 3. That said Court of Appeals of Maryland erred in affirming the judgment of said Court below, approving the assessment of the tax upon the real property of said Appellant, described as "submerged lands", which formed the bed of the Susquehanna River and the waters thereof impounded by the dam constructed by said Appellant, as a Licensee under said Federal license, granted by said Federal Power Commission, which "submerged lands" at the time of the assessment thereof for taxation by the State of Maryland and its political subdivisions, and subsequent thereto were in use by said Appellant as an Agent of the United States of America, and as an instrumentality to promote navigation upon a navigable river, which is a highway of interstate commerce.

Point 4. That said Court of Appeals of Maryland erred in entering a judgment whereby property of said Appellant, a unit under said license, granted by said Commission and an Agent and instrumentality of the United States, to promote navigation of an interstate river is assessed for taxation for State and County purposes.

Point 5. That said Court of Appeals of Maryland erred in affirming said judgment of said court below, whereby said assessment of real property of the Appellant for taxation in the State of Maryland, is arrived at by a different method, and upon a higher value than other real property owned by other taxpayers on the same tax roll or located in the same taxing district, and thereby the property of said Appellant will be taken without due process of law, contrary to the Constitution of the United States of America, and the Fourteenth Amendment thereof.

[fol. 528] B.

Parts of the record as filed in this Court, which it hereby designates as necessary to be printed by the Clerk, for the consideration of said points and the hearing of the above entitled case.

No.	Titles of the parts of the Record	Record page
1.	Tentative assessment by County Commissioners of Harford County, 1928	30-34
2.	September 25, 1928, Assessment for 1929, by County Commissioners of Appellant's real estate, Exhibits A and C	16-21
	Hearing before County Commissioners, October 4, 1928	22-23
3.	Protest and Objections by Appellant to the assessment of the County Commissioners	23-26
4.	Answer of County Commissioners to said Objections	26-28
5.	Final assessment by County Commissioners of Appellant	29
6.	Appeal of Appellant to State Tax Commission of Maryland	30
7.	Petition and Appeal of the Appellant against County Commissioners of Harford County, to the State Tax Commission of Maryland	10-15
8.	Testimony of Jesse V. Sealy	102-143
	" " George P. Roux	143-165
	" " Edward M. Allen	165-188
9.	Testimony of witnesses on said appeal for the County Commissioners,	
	John H. Gregory	194-276
	Weston E. Fuller	276-289
	(as far as the middle of page 295, "Third day's proceedings".	
10.	Report of Appellant as of January 1, 1929, to State Tax Commission	371-377
11.	Appellee's abstract of Pool Agreement, 1925	380-384
[fol. 529] 12.	Appellee's abstract of Master Contract between The Susquehanna Power Company, Philadelphia Electric Power Company, The Susquehanna Electric Company, and The Philadelphia Electric Company, dated 1925	403-407

No.	Titles of the parts of the Record	Record page
13.	Appellee's abstract of lease of Maryland properties by The Susquehanna Power Company, to The Susquehanna Electric Company, dated 1925	408-419
14.	Appellee's abstract of operating agreement between Susquehanna Electric Company and The Philadelphia Electric Company, dated 1925	419-423
15.	Appellee's abstract of guaranty agreement between The Philadelphia Electric Company and The Susquehanna Power Company, dated 1925	424-426
16.	Modifications of February 1st, 1926, of the aforegoing agreements of 1925 are set out:	
	a. The Supplemental Petition to the Public Service Commission of the Commonwealth of Pennsylvania	385-390
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17.	License from the Federal Power Commission, Project No. 405, to The Susquehanna Power Company and Philadelphia Electric Power Company	443-467
18.	Requests of Appellant to State Tax Commission for rulings of law	468-471
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20.	Order of the State Tax Commission and assessment by it of the real estate and "submerged lands" of Appellant	472-473
21.	Petition and Appeal of Appellant from the rulings of law, and the Order of the State Tax Commission, to the Circuit Court for Harford County, and Order of Court thereon	4-8

No.	Titles of the parts of the Record	Record page
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[fols. 530 & 531] 23.	Appeal and Affidavit by the Appellant to the Court of Appeals of Maryland, from the Order of the Circuit Court for Harford County, 29th of November, 1929, affirming the Order of said State Tax Commission	474
24.	Bill of Exceptions signed and sealed by the Circuit Court for Harford County, 21st of January, 1930, and Order transmitting the record and proceedings in the appeal, to the Court of Appeals of Maryland	475
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26.	Petition for Appeal to the Supreme Court of the United States, and Order of Chief Judge of the Court of Appeals of Maryland, allowing this appeal.	
27.	Assignment of Errors.	
28.	Copy of Appellant's bond and approval by said Chief Judge.	
29.	Original Citation to Appellee of the appeal, and admission of service thereof.	
30.	Præcipe and Notice to Appellee that Appellant will require the Clerk of the Court of Appeals to certify to the Clerk of the Supreme Court the entire printed record in said suit, and admission of service.	

Wm. Clarke Mason, S. A. & F. R. Williams, Attorneys for Appellant.

Service of the above points to be relied on and designation of parts to be printed, upon the Appellee admitted, this 20th day of August, 1930, and copy left with me.

Thos. H. Robonson, C. H. MacNabb, R. H. Archer, Attorneys for Appellee.

[fol. 532] [File endorsement omitted.]

[fol. 533] IN SUPREME COURT OF THE UNITED STATES

DESIGNATION OF ADDITIONAL PARTS OF RECORD TO BE PRINTED —Filed Aug. 29, 1930

The above Appellee hereby designates as necessary to be printed by the Clerk for the consideration of this case the following parts of the Record, in addition to those designated by the Appellant:

1. Insert Pages 8-9, inclusive, of the Record.
2. " From the word "indenture" page 55, to the end of the first paragraph on page 75, including the figures "1908."
3. " The part of page 82 commencing with the words "that Fred R. Williams", and running through to and including all of page 83.
4. " Testimony of W. Elijah Somerville, p. 297, to and including the end of Cross-examination of said witness on page 301.
5. " Statement on page 351 of the Record, made by Mr. Howard, counsel for the Susquehanna Power Company, starting with the words about the middle of that page— "What were the County Commissioners of Harford County called upon to do in the assessment proceedings that this is an appeal from?" down to and including the word "purposes" in the sixth line from the bottom of that page.
6. " The paragraph on page 357, starting with the words "Mr. MacNabb" to the end of the page, and continuing on page 358 down to the words "gas case" at the end of the third paragraph.
7. " The part of page 378 commencing with the word "assessment" printed in italics, down to but not including the words "assessed value of Baltimore stock," page 380.

8. Insert Pages 391 to 402, inclusive, of the Record.

Thos. H. Robinson, Charles H. MacNabb, Robert H. Archer, Attorneys for Appellee.

Service of the above notice and præcipe admitted this 28th day of August, 1930.

Wm. C. Mason, & S. A. & F. R. Williams, Attorneys for Appellant.

[fol. 534] [File endorsement omitted.]

Endorsed on cover: File No. 35,290. Maryland Court of Appeals. Term No. 368. The Susquehanna Power Company, appellant, vs. State Tax Commission of Maryland. Filed August 21, 1930. File No. 35,290.

FILE COPY

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SEP 8
CHARLES ELMO

No. 368. OCTOBER TERM, 1930.

IN THE

Supreme Court of the United States

THE SUSQUEHANNA POWER COMPANY, Appellant,

v.

STATE TAX COMMISSION OF MARYLAND, Appellee.

APPEAL FROM THE COURT OF APPEALS OF MARYLAND, APRIL TERM, 1930, GENERAL DOCKET NO. 38.

STATEMENT AS TO JURISDICTION ON APPEAL UNDER RULE 13 SECTION 1.

WM. CLARKE MASON,
2107 FIDELITY-PHILADELPHIA TRUST BUILDING, PHILADELPHIA, PA.
STEVENSON A. WILLIAMS,
FREDERICK R. WILLIAMS,
BEL AIR, MD.
Counsel for Appellant.

MORGAN, LEWIS & BOCKIUS,
Of Counsel.

In the Supreme Court of the United States.

OCTOBER TERM, 1930. No. 368.

The Susquehanna Power Company, Appellant,

v.

State Tax Commission of Maryland, Appellee.

APPEAL FROM THE COURT OF APPEALS OF MARYLAND, APRIL TERM, 1930, GENERAL DOCKET No. 38.

TO THE HONORABLE, THE SUPREME COURT OF THE UNITED STATES:

The Appellant hereby disclosing the basis on which it contends this Honorable Court has jurisdiction to review on appeal the judgment below, respectfully states:—

A.

This appeal is under Title 28 U. S. C. A. Section 344 (Jud. Code Section 237 amended).

Subsection (a)—"A final judgment or decree in any suit in the highest court of a State in which a decision in the suit could be had, where is drawn in question the validity of a treaty or statute of the United States, and the decision is against its validity; or where is

drawn, in question the validity of a statute of any State, on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, and the decision is in favor of its validity, may be reviewed by the Supreme Court upon a Writ of Error." [Now an appeal under the Act of January 31, 1928, abolishing Writs of Error, as amended by the Act of April 26, 1928. (U. S. C. A., 1929 Cumulative, Title 28 Secs. 861a, 861b) 275 U. S. at 646, 647.]

B.

This appeal is from a final judgment of the Court of Appeals of the State of Maryland, the highest Court of the State, filed June 12, 1930 (Rec. 488), and the application for appeal to this Court was presented to the Chief Judge of the Court of Appeals of Maryland on the 10th day of July, 1930 (Rec. 478), and on the same day an Order thereon of the Chief Judge of said Court granted said appeal.

C.

THE NATURE OF THE CASE AND RULINGS BELOW.

1. *The nature of the case.*

The Appellant, a corporation of Maryland, under one of its charters, the Act of the General Assembly of Maryland of 1908, Chapter 268 (Rec. 4-5, 431), and vested with a license from the Federal Power Commission (Rec. 443), hereinafter referred to, by virtue of said license, constructed and is operating since 1928 a dam across the Susquehanna River, between Harford and Cecil Counties, Maryland, known as the "Conowingo Dam," (see Topographical Map, U. S. Coast and G. Survey), located about six (6) miles below Mason and Dixon's Line, backing the water of the Susquehanna River to the tail race of the "Holtwood Dam" of the Pennsylvania Water and Power Company, a corporation of Pennsylvania, across the river between York and Lancaster Counties, Pennsylvania. This

pool and backwater, created by the Appellant's Conowingo Dam in Maryland, is:—

(1) Length in Pennsylvania, 42,560 lineal feet (about 8 miles); in Maryland, 28,740 lineal feet (about 5½ miles), that is to say, 59.7% is in Pennsylvania, and 40.3% in Maryland;

(2) The area of the pool is 9116 acres; 35% in Maryland, 64% in Pennsylvania;

(3) As to the head, about 50% arises in Maryland, and 50% in Pennsylvania;

(4) As to the drainage basin, 33,000 square miles in Pennsylvania and New York, and 65 square miles in Maryland;

(5) At the dam (about 4608 feet long, R. 298), the depth of the pool is about 90 feet, and at the Mason and Dixon's Line about 58 feet;

(6) The acreage of the pool and backwater in round numbers is about,—Pennsylvania, 4900 acres; Maryland, 4400 acres; Harford County, Maryland, 2110 acres, assessed as "submerged lands" by the State Tax Commission of Maryland; Cecil County, Maryland, 2314 acres, assessed as "submerged lands" (Rec., Roux, witness, 145, Rec. 10, 13, 14, 17, 18, 19, 21, 24, 27, 29, 31).

The Dam was constructed under authority of a license from Federal Power Commission.

"The conclusion is that this act (Federal Water Power Act) authorizing the construction of dams in navigable streams to impound the water, where rocky or shoaly conditions obtain, for the purpose of improving navigation by the slack water method does not offend the Constitution. It was within the power of Congress to create a Board called the Water Power Commission, to carry out the purpose of Congress, and to provide that such Commission should select its Licensees as a proper Federal Agency to carry out

the administrative detail of this general plan wherever applicable for the improvement of navigation."

(1922) Alabama Power Company *v.* Gulf Power Co., 283 Fed. 606, 620.

On the 20th of February, 1926, by virtue of the said license from the Federal Power Commission (Rec. 443), under the Act of Congress of 1920, Chapter 285, U. S. C. A. Title 16, Chapter 12, Federal Water Power Act, the Appellant became a Federal Agency and Instrumentality. The County Commissioners of Harford County assessed for 1929 (Rec. 16, 17, 18, 19, 20, 21, 22-29) the backwater or pool from said dam, covering 2110 acres in Harford County alone, under the name of "submerged lands and rights" at $6,620,786. On Appellant's appeal from the County Commissioners to the State Tax Commission (Rec. 30, 10), the assessment on the 2110 acres of the pool, called by the Commission "submerged lands," was reduced to $2,349,300. (Rec. 472). This last assessment by the Commission was appealed by the Appellant to the Circuit Court for Harford County (Rec. 4-9), and by it affirmed (Rec. 473), and thence appealed to the Court of Appeals of Maryland (Rec. 474), and by it affirmed June 12, 1930, although at the first opportunity, the Appellant protested the said Order of Assessment of the County (Rec. 23) and of the Tax Commission (Rec. 468-472), and repeated its protest before the Circuit Court (Rec. 4), and later before the Court of Appeals, on the ground that the levy of taxes thereunder upon the Appellant was in violation of the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States. The entire assessment by the said Tax Commission of the "submerged lands" for the year 1929 is:—

Harford County, 2110 acres, ...	$2,349,300.
Cecil County, 2314 acres, ...	2,357,540.
"Submerged lands" in both Counties,	$4,706,840.

In taxing the pool as "submerged lands," the State Tax Commission assessed them at *100%* of a valuation claimed to be excessive although at the same time assessing unflooded lands at only *60%* of their value (Rec. 171-172, 180). The present appeal of Appellant is taken from the assessment by the State Tax Commission on 2110 acres of the pool, created by the dam, called "submerged lands," in Harford County of $2,349,300., at about $1113. per acre. The assessment upon other property of the Appellant in Harford County was not appealed from.

2. *The rulings below:—*

(*a*) The opinion of the Court of Appeals misinterprets entirely the basis and extent of the Federal Water Power Act, and in effect declares that Act of Congress unconstitutional. If, for no other reason, the opinion of the Court of Appeals (Rec. 489), should be reversed.

Alabama Power Co. *v.* Gulf Power Co., 283 Fed. 606.

(*b*) The Court of Appeals of Maryland, as early as 1916, decided that the Susquehanna River was a navigable river (Rec. 497).

Havre de Grace *v.* Harlow, 129 Md. at 272-277.

And at page 278 held,

> "By reason of the nature of the grant given (by Act of General Assembly 1908, Chapter 268), it remains within the power of the legislature and State, whenever it shall deem it necessary for the purposes of navigable commerce to require such provision (locks) to be made."

If the Desplaines River is navigable, so is the Susquehanna.

Economy Light & Power Company *v.* United States, 256 U. S. 113. And see U. S. C. A. Title 16, Chapter 12, Section 796, for a Congressional definition of navigable waters.

(*c*) The opinion of the Court of Appeals errs when it states that:—

> "The Power Company is not such a Federal Agency as is by its very nature exempt from State taxation. Its capacity to perform such duties and functions in the service of the Federal Government as are imposed upon it, either by its own acts or by law, will not be impaired by the imposition upon it of its proportionate share of the public taxes of the State."

By Section 7 of the charter of the Company, Laws of Maryland 1908, Chapter 268, the State reserved the power to tax the gross receipts of the Company at 1½%. Congress under its absolute power, by the Federal Water Power Act (U. S. C. A. Title 16, Chapter 12) vested the United States, not only with a future contingent power and right to acquire the "complete unit" and project at the expiration of fifty years (Sections 807, 799), but also with the present power and right to acquire immediately any part of the project needed to complete navigation facilities (Section 804), and also by Section 803 Subsection e, the power to compel the Appellant to pay to the United States reasonable annual charges for the cost of administration of the Act.

The correlative duties, which will not be impaired according to the opinion of the Court below, and which are imposed on the Appellant by the Act and License, are:—

Duties in Course of Performance.	*Duties Subject to Immediate Call by United States for Performance.*
Section 803.	Section 804.
Cost of maintenance of project works for navigation and transmission, cost of renewals and replacements, depreciation reserves.	To construct at its own expense a lock or locks or other structures for navigation; furnish the United States, free of cost, power for operation of navigation facilities.
Expense of protection of life and health.	

Duties in Course of Performance.

Section 803.

Liability for damages to property of others by maintenance and operation.

Annual charges payable to United States for administration of Act.

Liability to United States for expropriation of excessive profits until amortization begins.

To operate works so as not to impair navigation, and necessarily including because of the exceedingly variable flow of the River, the maintenance out of earnings, either an equalization of Flow Reserve, or the investment of additional capital for construction of Storage Reservoirs.

Section 813.

Not to claim any value for the rights granted it (under the License) by the Federal Power Commission or by the Federal Water Power Act.

Duties Subject to Immediate Call by United States for Performance.

Sections 804, 811.

Control of the pool by the Secretary of War.

To maintain lights and signals required by Secretary of War.

To construct the balance of the Water Power development in excess of the original seven units as Federal Power Commision may direct. (License R. 452, Sec. c.)

License Art. 15 (Rec. 455), United States retains right to use water in such amount for navigation as Secretary of War may determine.

Section 809.

To permit United States to enter upon and take possession of project for the safety of United States.

Section 803. Sub-Section e.

To pay excess profits to United States.

It is submitted that the duties which may hereafter be imposed by the United States on Appellant are more imminent than "meaningless" possibilities or dreams, as ruled by the Court of Appeals, and are not remote in view of the "canalization" of the River now in actual process of consummation, by private capital, that is to say:—

(*a*) The contiguity of the fourteen-mile pool of Appellant's Conowingo Dam with the tail race of Pennsylvania Water and Power Company's Holtwood Dam (appendix Map);

(*b*) The contiguity of the eight-mile pool of the Pennsylvania Water and Power Company's Holtwood Dam with the tail race of The Safe Harbor Water Power Corporation's Safe Harbor Dam, now under construction across the River at Else Island;

(*c*) The ten-mile pool of the Safe Harbor Dam which will extend to the old Susquehanna and Tide-Water Canal Dam across the River just below Columbia (Lancaster County) and Wrightsville (York County);

(*d*) The existing dam of the York Haven Company at York Haven, Conewago Falls (York County), ten miles above Columbia.

Since the United States has the present power and right to acquire so much of the project lands as may be needed to complete navigation facilities, with the further power in view of such upstream developments on the River, to call on Appellant for the performance of additional duties involving large expenditures by Appellant, it seems clear that now, and not fifty years hence, the United States is vested, not solely with a contingent interest in the "complete unit and project" whereof the pool and so-called "submerged lands" are expressly made a part by the description in the License, but with

> "A power coupled with an interest which is the possession of a right in the subject over which the power is to be exercised that makes the interest."
>
> Wilson *v.* Snow, 228 U. S. 217, at 224.

And further such interest as the United States has in that "complete unit and project" and in its necessarily and expressly included pool and so-called "submerged lands" connotes the future uses and duties demanded by the United States when and as they arise.

(1916) Utah Power & Light Co. *v.* United States, 243 U. S. 389 (s. c. 230 Fed. 328, at 336).

The consideration to the United States for the grant of the License to Appellant was its development and maintenance of the navigable capacity of this particular river, for the fact is that the Secretary of War reported to Congress (H. R. Doc. No. 219, 58th Congress, Second Session) the prohibitive cost to Congress to attempt a development on this river. That Report was one of the moving reasons for the passage of the Federal Water Power Act.

And the consideration to Appellant for the capital expenditures was the incidental development of electric energy from the surplus water not required by the United States to maintain the facilities for navigation. The License to Appellant having been accepted is the Contract between it and the United States, which Appellant must continue to perform or submit to forfeiture.

(1922) Alabama Power Co. *v.* Gulf Power Company, 283 Fed. 606, at 615.

But the opinion below ignores the rulings of this Court:—

A State tax cannot be

"derogatory to the dignity, subversive of the powers or repugnant to the paramount authority" of the United States.

Macallen Co. *v.* Massachusetts, 279 U. S. 620, at 628.

The effect of the State tax upon a Federal function cannot

"burden or interfere with the exertion of a national power or make it a source of revenue."

(1928) Panhandle Oil Co. *v.* Mississippi, 277 U. S. 218, at 221.

In view of the actual developments and developments now in course of construction, upstream on this river, the instant tax on the "submerged lands" cannot be ruled valid as

"an interference too remote."

Panhandle Oil Co. *v.* Mississippi, *idem*, at 225.

"What Government instrumentalities will be held free from State taxation though Congress has not expressly so provided, cannot be determined apart from the purpose and character of the legislation creating them."

(1927) Shaw *v.* Oil Corporation, 276 U. S. 575, at 578.

"Without Congressional consent no federal agency or instrumentality can be taxed by State authority. 'With regard to taxation, no matter how reasonable, or how universal and undiscriminating, the State's inability to interfere has been regarded as established since McCulloch *v.* Maryland, 4 Wheat. 316.'"

(1925) Jaybird Mining Co. *v.* Weir, 271 U. S. 609, at 613.

"While it is evident that in one aspect the exemption must finally depend upon the effect of the tax upon the functions of the Government alleged to be affected by it, still the nature of the Governmental Agencies or the mode of their constitution, may not be disregarded, in passing on the question of tax exemption, for it is obvious that an agency may be of such a character or so intimately connected with the exercise of a power,

or the performance of a duty by the one Government that any taxation of it by the other, would be such a direct interference with the functions of Government itself as to be plainly beyond the taxing power."

(1925) Metcalf *v.* Mitchell, 269 U. S. 514, at 524.

"The limitation upon the taxing power of each (Federal and State) so far as it affects the other, must receive a practical construction which permits both to function with a minimum of interference, each with the other." *Idem*, pp. 523-524.

(*d*) The tax in question is assessed in terms on "submerged lands" on which the water of the pool is held by the dam. The Appellant has no property in the pool, which is subject to any direct tax at all, either Federal or State, and the taxing of the "submerged lands" is nothing more than a device to reach a taxation of the pool, *i. e.*, the flowing water of the river, that cannot be taxed.

U. S. *v.* Chandler-Dunbar Co., 229 U. S. 53.

The Appellant, by virtue of its charter, had express power to dam the river and to submerge the bed of the stream, that is to say,—to create the pool "in aid of the powers of Congress" (Section 5). The Appellant created the pool. The Appellant is a riparian proprietor of both shores of the river, but the Appellant's inchoate right to dam the river and create the pool was not complete until the grant of the License from the United States. And further by said Act and License, the easement of the Appellant under its charter, was established as a Federal highway, and by virtue of the requirement of locks, enlarging the earlier declarations of the river as a public highway under the Acts of Pennsylvania of 1771 and 1785, and of Maryland of 1797, Chapter 99, and by the Federal Water Power Act, the Appellant's easement over the pool is not

one of absolute and exclusive use (as the opinion of the Court of Appeals holds), but is qualified and subject to the express terms of the Act, which vest in the United States the present interest and continuing control above referred to.

Since the Appellant (and its predecessors) is a riparian proprietor on both shores of the River and by the Act of 1908 as shown, acquired permission from the State of Maryland to dam and submerge the bed, there was no necessity to apply for and secure from the State of Maryland warrants and patents for the title to the bed of the River to enable it to create the Pool by the use of the flow of the River. The Appellant and its predecessors did acquire patents for many islands and rocks in the River, both above and below the dam merely as a protection against title in others which might require condemnation.

The islands and rocks and bars included within its warrants in fact operate merely as security from the State for priorities of appropriation of sites for dams and tail race under the Act of 1908, and for priority of application for the Appellant's Federal License.

N. J. *v.* Sargent, 269 U. S. 328, at 339.

In an effort to avoid the ruling in the Chandler-Dunbar case, 229 U. S. 53, that no one can have a property right in the flow of the river, even if he owns to "the middle thread" thereof, the opinion of the Court of Appeals sets up that private ownership may be had in the bed of this river, and cites Brown *v.* Kennedy, 5 H. & J. 195, the facts of which do not fit the instant case of a flowing river, for there Jones' Falls in Baltimore City had been diverted entirely from its bed into a canal and the ejectment was between the contiguous proprietors *over the then title to the exposed dry bed*, that is to say:—

> "The State has the right to grant the soil covered by navigable water, subject to the public or common right of navigation and fishery, and inferentially that

> a title originating in a patent issued under general law from the Land Office, attached to the land and gave a right of possession *when the waters ceased to exist.*"
>
> (1898) Morris *v.* U. S., 174 U. S. 196, at 238;
> (1906) Baltimore City *v.* Steamboat, 104 Md., at 492-3.

The Chandler-Dunbar Case has decided that the Appellant's title to the bed of the Susquehanna River is a qualified one, not absolute, and the water flowing over it is not subject to taxation by the State of Maryland or any other sovereignty.

(*e*) The concluding error of the opinion of the Court of Appeals is:—

> "Assuming that neither the license nor the franchises may be taxed, the value they gave to Appellant's project by permitting it to operate, is taxable."

For, by the Federal Water Power Act, U. S. C. A. Title 16, Chapter 12, Section 813:—

> "No value shall be claimed or allowed for the rights granted by the Commission, or by this chapter."

If the value of the License and franchises granted by the Federal Government to the flow of the river, subject to all the duties demanded by the Federal Government, as heretofore shown, may not be claimed by the Licensees for rate making purposes, then the State cannot indirectly put a tax valuation on them by taxing them as "submerged lands" at $1113. an acre. It may be noted in passing that the adjoining unsubmerged lands are assessed at from $10. per acre to $50. per acre.

D.

THE CASES BELIEVED TO SUSTAIN THE JURISDICTION.

The following decisions are believed to sustain the jurisdiction of this Court of the appeal of the Appellant:—

Economy Light & Power Company *v.* United States, 256 U. S. 113.	The Susquehanna River is a navigable river.
King *v.* Augusta, 277 U. S. 100, 104, 108.	An Order of a Tax Commission is a Statute of the State.
Wilson *v.* Snow, 228 U. S. 217, 224.	The United States has something more than a remote contingent interest.
Alabama Power Co. *v.* Gulf Power Co., 283 Fed. 606, 615, 620.	The Federal Water Power Commission may select its licensee as proper Federal Agency.
Utah Power & Light Company *v.* U. S., 243 U. S. 389.	The future uses of the United States as they arise.
Macallen Co. *v.* Massachusetts, 279 U. S. 620, 628.	A State tax cannot be repugnant to the paramount authority of Congress.
Panhandle Oil Co. *v.* Mississippi, 277 U. S. 218, 221.	A State tax cannot make a Federal function a source of revenue.
Shaw *v.* Oil Corporation, 276 U. S. 575, 578.	The purpose of the Federal Water Power Act determines whether Appellant is a Federal Agent.
Jaybird Mining Co. *v.* Weir, 271 U. S. 609, 613.	Congressional consent is necessary to tax a Federal instrumentality.

Metcalf & Eddy *v.* Mitchell, 269 U. S. 514, 524.	The character of the Agent and its duties may prevent the interference of a State tax.
U. S. *v.* Chandler-Dunbar Co., 229 U. S. 53, 69.	Appellant has no property in the water of the pool which can be reached for taxation by the State of Maryland.

The jurisdiction of this Court would seem to be clear.

Respectfully submitted,

WM. CLARKE MASON,
STEVENSON A. WILLIAMS,
FREDERICK R. WILLIAMS,
Counsel for Appellant.

MORGAN, LEWIS & BOCKIUS,
Of Counsel.

Supreme Court of the United States.

OCTOBER TERM, 1930. No. 368.

The Susquehanna Power Company,
Appellant,

v.

State Tax Commission of Maryland.

APPELLANT'S BRIEF.

APPEAL FROM THE COURT OF APPEALS OF THE STATE OF MARYLAND.

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OFFICIAL REPORT OF THE CASE IN THE COURT OF APPEALS OF MARYLAND.

The opinion below was delivered on June 12, 1930, and will be reported in 129 Md. . It is not yet available in the bound volume of Maryland reports. It is, however, reported in 151 Atl. 29. It also appears in the transcript of record, pp. 324-345.

STATEMENT OF THE GROUNDS ON WHICH THE JURISDICTION OF THIS COURT IS INVOKED.

The Appellant has duly filed with this Honorable Court a "Statement As To Jurisdiction On Appeal" in compliance with Rule 12, Section 1 of the Revised Rules of this Court. Inasmuch as the validity of the action of the State Tax Commission pursuant to the Public General Laws of Maryland (1924), Article 81, was by the Appellant in this case called in issue as repugnant to various portions of the Federal Constitution, and inasmuch as the decision below was in favor of the validity of the action of the State Tax Commission under the State statute, it is submitted that, under the provisions of U. S. C. A. Title 28, §344, this Court will review the decision upon appeal in the nature of a writ of error, under the provisions of the Act of Congress of January 31, 1928, c. 14, as amended by the Act of Congress of April 26, 1928.

QUESTIONS PRESENTED.

Has the State of Maryland the power to assess the tax complained of on "submerged lands" constituting the bed of the Susquehanna River, the paper title to which is held by a Licensee of the Federal Government which has constructed a dam in aid of navigation, after the lands have been completely and permanently submerged pursuant to the exercise of the License?

If such power exists, is an assessment lawful which includes the value given to the waters of the River by the exercise of the powers granted by the Federal License and arbitrarily exceeds the assessed value of unsubmerged adjacent lands of other taxpayers?

STATEMENT OF CASE.

The assessment now on appeal before this Court had its origin in an item of assessment made by the County Commissioners of Harford County on September 25, 1928, against The Susquehanna Power Company for the taxable year 1929, reading as follows:—

"Submerged Land and Rights $6,622,816." (R. 16).

On October 4, 1928, following general objections filed by the Appellant (R. 18), the said County Commissioners submitted "the items of all that go to make up the assessment on the property of The Susquehanna Power Company in the Fifth Election District of Harford County, as follows" (R. 21, 22):—

* * * * * * *

"Submerged lands, 2,110 acres, and rights therein $6,620,786."

* * * * * * *

After a hearing on October 4, 1928 (R. 18), The Susquehanna Power Company took its appeal to the State Tax Commission (R. 24) and after a hearing at which considerable oral (R. 49-220) and documentary evidence was taken the State Tax Commmission on October 11, 1929 (R. 316), filed its order reversing the County Commissioners and making a revised assessment wherein the item in question appeared as follows (R. 317):—

"2,110 Acres (more or less) submerged land $2,349,300."

Under date of November 7, 1929 (R. 1), The Susquehanna Power Company took its appeal from the foregoing order to the Circuit Court for Harford County and on November 29, 1929 (R. 317), the said Court after argument entered its order (without opinion) affirming the action of the State Tax Commission. From this order the Power Company filed its appeal on December 6, 1929 (R. 317-318), to the Court of Appeals of Maryland. On June 12, 1930, in an opinion (R. 324-345) filed that day the Court of Appeals of Maryland re-affirmed the order of the State Tax Commission.

The "2110 acres (more or less) submerged land," which is the subject of the $2,349,300. tax assessment for the year 1929 (R. 317), involved in this appeal, constitutes a portion of the bed or bottom of the Susquehanna River in the Fifth Election District of Harford County, Maryland (R. 22, middle of page; and R. 326). It is the same identical property which was assessed for the year 1928 as (R. 15):—

"2110 acres, Bed of River, at $10., $21,000."

Except for the fact that it is covered or "submerged" by the water of the Susquehanna River it is land of substantially the same general character as the adjoining shore land in the same Election District which is assessed to the same taxpayer by the same taxing authority for the same year 1929 as follows (R. 317):—

569.81 Rocky hillside land at $20. per acre $11,396.
888.67 Acres Woodland at $30. per acre $26,460.

It is self evident that the "submerged land," *qua land*, in its flooded condition (90 feet deep in places (R. 102)) is of no use to support life, except possibly fish or other aquatic life and as such it actually has no substantial value. Prior to the construction of Appellant's dam (in 1928) by far the major portion of this "submerged land" area constituted the rocky, shoaly natural bed of the Susque-

hanna River and the small remaining portion might be classed under one or the other taxable heads, of "rocky hillside land," or "woodland." Numerous instances of the taxable value of land (which is actually used and occupied by human beings) in this immediate neighborhood (R. 116) indicate clearly that most of it is assessed at from $10. to $25. per acre with certain rare exceptions as high as $50. or $60. per acre (R. 114-117). These rates are what counsel for the taxing authorities refer to as "the regular price" or "the regular county rates" (R. 108) and are in marked contrast to the tax valuation placed upon Appellant's "submerged land" of approximately $1113. per acre.

As it is the contention in this case, of the Appellant on the one hand, that the State of Maryland has no power at all to tax these "submerged lands" and it is the contention of the State of Maryland (by its State Tax Commission supported by the decision of the Court of Appeals) on the other hand that it not only has the right so to tax but also that it may exercise that right by placing a valuation thereon for taxation purposes of more than 10,000% greater than other similar, but unsubmerged, land in the vicinity, it would seem to be of interest here to sketch briefly the history of the lands in question and the Appellant's relation thereto from a legislative and corporate fact standpoint.

The *bed** of the Susquehanna River (of which the lands, included within the assessment here complained of, are a part) has repeatedly been declared by the State of Maryland, as well as by the neighboring State of Pennsylvania, to be *a public highway*. This fact may be apparent from the following quotations, viz.:—

From Act of January 20, 1798 (Laws of Maryland 1797 Chap. 99):—

> *"The bed of the river Susquehanna,* from the Maryland line to tidewater, *shall be considered a public*

* Italics in quotations throughout this Brief are ours, unless otherwise noted.

highway, free for any person or persons whatever to work thereon in clearing the obstructions to its navigation."

From Act of February 19, 1801 (Laws of Pennsylvania, Vol. III Smith's Laws, p. 462):—

"SEC. 5. And be it further enacted by the authority aforesaid, That *the river Susquehanna* down to the Maryland line, shall be, and the same *is hereby declared to be a public highway*, any Act or law of this Commonwealth, to the contrary notwithstanding."

From Act of January 27, 1814 (Laws of Maryland 1813 Chap. 116):—

"In consideration of the Act of the Legislature of Pennsylvania, passed February 19, 1801 (etc. describing the act last above quoted), *the bed of the river Susquehanna* from the Maryland line to the bay of Chesapeake, *is hereby declared, and shall forever hereafter be, a public highway*, and individuals or bodies corporate may at all times remove obstructions to its navigation."

It will be noted that both of the Maryland acts above referred to conferred a general right *upon the public* to clear or remove from this public highway "obstructions to its navigation." Each of these acts, however, carried a proviso that this right was not to be exercised with respect to "obstructions" which might be placed in the highway by a corporation known as "The Proprietors of the Susquehanna Canal" which was given (by these and numerous other acts) very broad powers to construct works designed to promote navigation in this public highway. All of the corporate powers and authorities of the said "The Proprietors of the Susquehanna Canal" have become vested in the present Appellant, The Susquehanna Power Company, as will be seen from Section 5 of its 1908 Charter hereinafter referred to.

Among the corporate powers and authorities of The Proprietors of the Susquehanna Canal, so vested in this Appellant as aforesaid, is the following from the Act of January 22, 1785 (Laws of Maryland 1784, Chap. 66), viz.:—

> "That the said canal, locks and other works * * * *shall not be subject or liable to pay any tax, imposition, duty or assessment, whatsoever; * * * that is to say,* provided always, that *such exemption from taxation shall extend to such works as relate merely to,* and are necessary for, the *navigation* of said canal."

The Susquehanna Power Company, appellant in this case, was incorporated many years ago by special acts of the General Assembly of the State of Maryland. From time to time its corporate powers have been amended, reaffirmed and enlarged by subsequent laws, the most important of which is the Act of April 6, 1908 (Laws of Maryland 1908 Chap. 268) generally referred to as the appellant's "1908 Charter." This law of the State of Maryland commences with certain preambles reading as follows:—

> "WHEREAS, The Susquehanna Power Company is about to undertake the construction of a dam or dams across the Susquehanna river between tidewater and Mason's and Dixon's line, the elevation of the crest or crests of which dam or dams shall not exceed one hundred and ten (110) feet; and
>
> * * * * * * *
>
> "WHEREAS, *The erection of a dam or dams on said river for power purposes makes possible the slack water navigation of said river as herein set forth, all of which uses are highly important for the welfare of this State,*"

and by its enacting clauses, *inter alia,* as follows:—

> "SEC. 3. *And be it further enacted,* That the said Susquehanna Power Company, its successors and as-

signs, be and they are hereby authorized and empowered to locate and build in, along or across the said river and the bed and shores thereof, and the canals, railroads, ferries and highways thereon, therealong or leading thereto, any dam or dams the crest or crests of which shall not exceed an elevation of one hundred and ten (110) feet above mean low tide at Havre de Grace, said dam or dams to be located at any points between tidewater and Mason & Dixon's line, together with all necessary power-plants and works, appurtenances and accessories."

* * * * * * *

"SEC. 5. *And be it further enacted.* That *in consideration of the construction* by the said Susquehanna Power Company, its successors and assigns, of a dam or dams in, along or across the said river, * * * said Susquehanna Power Company, its successors and assigns be and it is hereby declared to be also a slack water navigation company with all the powers and authorities of the charters of * * * The Proprietors of the Susquehanna Canal *to the end that in aid of the powers of Congress* it may create a safe and practicable navigation up and down said river, either upon the bed thereof, by means of said backwater or otherwise, or by means of a canal or canals along the margin thereof, or by means of such methods conjointly, either above or below said dam or dams, *to the end that real navigation of said river above tidewater in Maryland heretofore so often unsuccessfully attempted, may now be established.*"

* * * * * * *

"SEC. 7. And be it further enacted, That the said corporation so far as its gross receipts may result *from the sale of electrical energy* shall be subject to the provisions of Chapter 712 of the Acts of 1906, and *liable to pay the gross receipt tax* for said chapter *imposed on electrical construction and gas companies*

by said Act or by any subsequent amendments or modifications thereof."

* * * * * * *

"SEC. 10. And be it further enacted, That this *Act is hereby declared to be a public Act because of the purposes aimed to be hereby accomplished,* and shall be *construed liberally* both in aid of its terms and provisions and in aid of the public, and shall take effect from the date of its passage."

Our history up to this time presents a picture of single-handed effort on the part of the State of Maryland to do that thing which she declares in the preamble to Appellant's 1908 Charter to be so "highly important for the welfare of this State," namely to "make possible the slack water navigation of said river." Up to this point no "powers of Congress" have appeared, "in aid" of which (as the State of Maryland says in her 1908 Act, Sec. 5, *supra*) the various broad powers and rights have been vested in Appellant by the said State. On June 10, 1920, however, the Federal Government becomes an actor in this ancient drama for on that date there was approved an Act of Congress (41 Stat., p. 1063) known as "The Federal Water Power Act" which had for its object, first stated in its title, "To Provide for the Improvement of Navigation." As The Federal Water Power Act has a very important bearing on the questions raised by this appeal it would seem worth while here to outline briefly some of its more important provisions.

After defining (in Section 3, of the Act) "Navigable Waters" as meaning:—

"Those parts of streams or other bodies of water over which Congress has jurisdiction under its authority to regulate commerce with foreign nations and among the several States, and which either in their natural or improved condition * * * are used or suitable for use for the transportation of persons or property in interstate or foreign commerce * * *."

Congress in Section 4 (*d*) of The Federal Water Power Act provides that a certain Commission, created by the Act and to be known as the "Federal Power Commission," is hereby authorized and empowered—

> "To issue licenses to citizens of the United States * * * or to any corporation organized under the laws of the United States or any State thereof * * * *for the purpose of constructing, operating, and maintaining dams, water conduits, reservoirs, power houses, transmission lines, or other project works necessary or convenient for the development and improvement of navigation,* and for the development, transmission and utilization of power across, along, from or in any of the navigable waters of the United States * * * Provided further, that no license affecting the navigable capacity of any navigable waters of the United States shall be issued until the plans of the dam or other structures affecting navigation have been approved by the Chief of Engineers and the Secretary of War. *Whenever the contemplated improvement is, in the judgment of the Commission, desirable and justified in the public interest for the purpose of improving or developing a water way or water ways for the use or benefit of interstate or foreign commerce, a finding to that effect shall be made by the commission and shall become a part of the records of the Commission.*"

SEC. 6 provides that Licenses shall be issued for a period not exceeding fifty (50) years and shall be conditioned upon acceptance by the Licensee of all of the terms and conditions of the act and such further lawful conditions as the Commission may prescribe.

SEC. 8 provides that no Licensee may transfer or assign its License without the written approval of the Commission.

SEC. 10 provides certain general conditions applicable to all Licensees, viz.:—

> "(*a*) That the project adopted * * * shall be such as in the judgment of the Commission will be

best adapted *to a comprehensive scheme of improvement and utilization for the purposes of navigation,* of water power development, and of other beneficial public uses;"

"(*b*) That except when emergency shall require *for the protection of navigation,* life, health or property, no substantial alteration or addition * * * shall be made * * * without the prior approval of the Commission;"

"(*c*) That the licensee shall maintain the project works in a condition of repair adequate *for the purposes of navigation* and * * * shall so maintain and operate said works *as not to impair navigation* * * *."

(*d*) From surplus accumulated in excess of a specified rate of return on actual, legitimate investment, licensee must establish and maintain an amortization reserve to reduce said net investment.

(*e*) Licensee must pay to United States an annual charge to be fixed by the Commission from time to time.

(*f*) Whenever benefited by the construction work of another Licensee of an (upstream) storage reservoir each Licensee so benefited must pay said other Licensee such equitable amount as may be fixed by Commission.

(*g*) Other conditions as required by Commission.

(*h*) That combinations to limit the output or increase prices of electrical energy are prohibited.

SEC. 11 provides that *to promote the present and future needs of navigation,* consistent with a reasonable investment cost to Licensee, Commission may require any one or more of the following:—

"(*a*) That such licensee shall, to the extent necessary *to preserve and improve navigation facilities, construct,* in whole or in part, without expense to the United States, in connection with such dam, *a lock or locks,* booms, sluices, *or other structures for navigation*

purposes, in accordance with plans and specifications approved by the Chief of Engineers and the Secretary of War and made part of such license.

"(*b*) That in case such structures for navigation purposes are not made a part of the original construction at the expense of the licensee, then *whenever the United States shall desire to complete such navigation facilities the licensee shall convey to the United States, free of cost,* such of its *land and* its *rights of way* and such right of passage *through its dams or other structures,* and permit such control of pools as may be required *to complete such navigation facilities.*

"(*c*) That such licensee *shall furnish free of cost to the United States power for the operation of such navigation facilities,* whether constructed by the licensee or by the United States."

SEC. 12 provides:—

"That whenever application is filed for a project hereunder involving navigable waters of the United States, and the commission shall find upon investigation that the needs of navigation require the construction of a lock or locks or other navigation structures, and that such structures can not, consistent with a reasonable investment cost to the applicant, be provided in the manner specified in section 11, subsection (*a*) hereof, the commission may grant the application with the provision to be expressed in the license that *the licensee will install the necessary navigation structures* if the Government fails to make provision therefor within a time to be fixed in the license and cause a report upon such project to be prepared with estimates of cost of the power development and of the navigation structures, and shall submit such report to Congress with such recommendations as it deems appropriate concerning the participation of the United States in the cost of construction of such navigation structures."

SEC. 13. Each Licensee is bound to commence and complete the project within a time to be specified in the License.

SEC. 14. Upon expiration of the License the United States has the absolute right to take over the entire project upon payment of the "net investment" (as carefully defined by Sec. 3 taking into account amortization etc.) which is "not to exceed the fair value of the property taken."

SEC. 18:—

> "That the *operation of any navigation facilities* which may be constructed as a part of or in connection with any dam or diversion structure built under the provisions of this Act, whether at the expense of a licensee hereunder or of the United States, *shall at all times be controlled* by such reasonable rules and regulations *in the interest of navigation*, including the control of the level of the pool caused by such dam or diversion structure as may be made from time to time by the Secretary of War."

There are of course many other provisions in said Act designed to control the so-to-speak "by-product" use by Licensee of the dam and project for the development of hydro-electric power, but the above would seem to be sufficient to indicate the very real and important interest and right which the United States has and exercises over every licensed project from the standpoint of its use whether as actual or potential or both *in the matter of developing and promoting navigation.*

For an earlier consideration of the provisions of The Federal Water Power Act by this Court see *New Jersey* v. *Sargent*, 269 U. S. 328, 335-337.

On April 14, 1923 (see 3rd Annual Report of the Federal Power Commission, p. 190), the Appellant filed its Declaration of Intention with the Federal Power Commission and applied for a Preliminary Permit for a Project:—

"involving the construction of a dam and power house with appurtenant works in the Susquehanna River, in Cecil and Harford Counties, Md., and Lancaster and York Counties, Pa."

At its meeting held June 15, 1923 (see 3rd Annual Report of the Federal Power Commission p. 174) the Commission declared, *inter alia* (p. 191):—

> *"it appearing that said project can be developed into and adapted to a comprehensive scheme of improvement and utilization for the purposes of navigation,* of water-power development, and of other beneficial public uses; it was voted that preliminary permit be issued for a period of two years, subject to the provisions of said act, to the rules and regulations of the Commission pursuant thereto, and to such conditions *in the interests of navigation* as may be recommended by the Chief of Engineers."

On Aug. 3, 1923, such a preliminary permit was issued to Appellant (4th Annual Report of F. P. C. p. 210).

At its meeting of January 2, 1925, pursuant to application by Appellant for a License (as distinguished from the preliminary permit already issued) to be issued jointly to it and a Pennsylvania corporation (because a part of the whole project would extend into the latter State) the Commission recited the full details of the proposed project and took the following action (see 5th Annual Report of F. P. C. p. 76):—

> "and the commission finding that said project *will be best adapted to a comprehensive scheme of improvement and utilization for the purposes of navigation,* of water-power development, and of other beneficial public uses, and that the contemplated improvement is desirable and justified in the public interest, *for the purpose of improving or developing said Susquehanna River for the use or benefit of interstate or foreign*

commerce; it was voted that upon approval of the plans of the dam and other structures affecting navigation by the Chief of Engineers and the Secretary of War that license be issued for a period of 50 years; subject to the provisions of said act, to the rules and regulations of the commission pursuant thereto, to the following special conditions, and to such further conditions, if any, as the Chief of Engineers may find necessary or desirable *in the interests of navigation."*

At its meeting of February 27, 1926 (6th Annual Rep. of F. P. C. pp. 104, 105-116) the issuance of a License to Appellant under date of February 20, 1926, for the proposed development ("Project No. 405," which has "come to be known as the Conowingo Project") was announced and the manner and method of financing the estimated cost thereof (amounting to upwards of Fifty-two Million dollars) by the issuance of stock and bonds under the direct supervision of the Federal Commission is recited in minute detail covering more than ten printed pages of the Report.

The Federal License (R. 288-311) issued to the Susquehanna Power Company, Appellant in this case, by the Federal Power Commission on February 20, 1926, after designating the Appellant as "Licensee 'A'" (R. 290), contains the following preambles:—

"WHEREAS, the Commission finds that said project, as hereinafter described, *will be best adapted to a comprehensive scheme of improvement and utilization of said waterway* (referring to Susquehanna River) *for the purposes of navigation,* of water power development and of other beneficial uses; and

"WHEREAS, the Commission, did, on the second day of January, 1925, find that the contemplated improvement is desirable and justified in the public interest *for the purpose of improving or developing a waterway, namely, said Susquehanna River, for the use or benefit of interstate and foreign commerce,* a certified copy

of the records of the Commission containing such finding being hereto attached;"

The grant of the License provides as follows (R. 292):—

"Now, therefore, the Commission hereby issues this License to the Licensees for the purpose of constructing, operating and maintaining certain project works *necessary or convenient for the development and improvement of navigation* and for the development, transmission and utilization of powers across, along, from or in said Susquehanna River."

Said "project works" are described in Article 2-C of said License as consisting, *inter alia*, of (R. 294):—

"(*a*) A dam and reservoir across and in the Susquehanna River; said dam being located a short distance above Octoraro, Maryland;"

The License is issued for a period of fifty (50) years from the date thereof (R. 293).

Some of the provisions showing the Commission's intense interest in the promotion of navigation by means of this project are as follows (R. 298, 299, 300):—

"Article 8. Insofar as any material is dredged or excavated in the prosecution of the work herein authorized, it shall be removed and deposited *so it will not interfere with navigation* and to the satisfaction of said District Engineer."

* * * * * * *

"Article 13. The operation *of any navigation facilities* which may be constructed as a part of or in connection with any dam or diversion structure built under the provisions of this license shall at all times be controlled by such reasonable rules and regulations *in the interest of navigation*, including the control of the level of the pool caused by such dam or diversion structure, as may be made from time to time by the Secretary of War. * * *"

"Article 14. Licensee 'A' shall construct and install such appliances as are necessary for *furnishing power for the operation of navigation facilities,* including lights and signals, whether constructed by the Licensees, or by the United States; and *shall furnish free of cost to the United States power for the operation of such navigation facilities.*"

"Article 15. The United States specifically retains and safeguards the right to use water in such amount, to be determined by the Secretary of War, *as may be necessary for the purposes of navigation.*"

"Article 16. *The Licensees, whenever the United States shall desire to install navigation facilities, shall convey to the United States, free of cost, such of their lands and rights of way and permit such control of pools as may be required for such navigation facilities; and Licensee 'A' shall grant to the United States, free of cost, such right of passage through its dams or other structures as may be required for providing or using such facilities.*"*

Many other provisions appear in the License regulating and governing the use of the project for hydro-electric purposes, the manner and method of operation, financing, etc., but the above are sufficient to indicate clearly that one of the primary purposes of the Federal Power Commission in granting the License *was to promote navigation on the Susquehanna River.*

The Susquehanna Power Company, Appellant here, accepted this License and all of its terms and conditions (including all of the terms and conditions of the Federal Water Power Act) by a formal resolution of its Board of Directors duly adopted prior to or simultaneously with the issuance of the License and filed written evidence of that acceptance with the Federal Power Commission similar in form to the written acceptance of its joint Licensee, Philadelphia Electric Power Company (R. 312). For some unknown reason a copy of this written acceptance appears to

* Italics ours.

have been inadvertently omitted from the Record (R. 312) in transcribing the License. The original acceptance of the Susquehanna Power Company may be found in the files and records of the Federal Power Commission.

Immediately upon receipt of its Federal License aforesaid and pursuant to all of the terms and conditions thereof The Susquehanna Power Company commenced in 1926 the construction of a dam almost a mile long (R. 217) across the Susquehanna River at a place known as "Shures Landing" (R. 325) a short distance above tidewater in Harford and Cecil Counties, Maryland. This dam was completed in 1928 and, of itself, now provides perfect navigation both up and down the Susquehanna River for a distance of almost fourteen miles (R. 101) by the creation of a long slack water pool extending upstream across the northern boundary of Maryland into the State of Pennsylvania as far as the Holtwood Dam (R. 103 "Homewood" there being a typographical error for "Holtwood"; sometimes otherwise known as the "McCall's Ferry Dam," see R. 324) of the Pennsylvania Water & Power Company. This Holtwood Dam, in turn, provides another slack-water stretch of river upstream for a distance of 8 miles. At the upstream end of the Holtwood pool there is now being erected by the Safe Harbor Water Power Corporation still another dam at an estimated cost in excess of thirty million dollars (see 10th Annual Report of F. P. C., p. 233). A Federal License for this Safe Harbor Dam was granted by the Federal Power Commission on April 22, 1930, and the slack-water created by it will extend upstream for a distance of another 10 miles (see 10th Annual Report of F. P. C., p. 233). At its meeting on March 22, 1930, when the erection of this Safe Harbor Dam was authorized the Commission found, *inter alia* (10th Annual Report F. P. C., p. 104):—

> "that said project (at Safe Harbor) will be best adapted *to a comprehensive scheme of improvement and utilization for the purposes of navigation.*"

and at the same meeting, the Commission provided that the License should only be issued upon the following condition (10th Annual Report F. P. C., p. 105):—

> "(*a*) That whenever the United States shall desire to construct, complete, or improve navigation facilities, *the Licensee shall,* in lieu of the natural channel to be appropriated for tail-water discharge, *provide a new navigation channel* of dimensions and alignment satisfactory to the Secretary of War *which shall meet the requirements of navigation under such future project as may be approved by Congress.*"

Above the ten mile slack water pool of the Safe Harbor project there exists the old Susquehanna and Tidewater Canal Dam across the river a short distance downstream from the City of Columbia, Pennsylvania. About ten miles further upstream is the existing dam of the York Haven Water Company at York Haven. The statement of the Executive Secretary of Federal Power Commission, at the meeting of the Commission on April 30, 1923 (3rd Annual Rep. of F. P. C., p. 155, 161), when the Appellant's project first came before the Commission for consideration, can therefore be readily appreciated (*id.*, p. 161):—

> "This dam (speaking of The Susquehanna Power Company's dam in Maryland), together with a proposed dam above the Holtwood project (*i. e.*, the Safe Harbor dam) *would create slack water extending practically all the way from tidewater to Harrisburg.*"

From the above some idea can be formed of what Congress and the Federal Power Commission have had in mind when they speak so frequently of *"a comprehensive scheme of improvement and utilization for the purposes of navigation,"* and when the Commission repeatedly finds as a fact *"that the interests of interstate or foreign commerce will be affected by"* the project of the Appellant and others.

The bed of the Susquehanna River beneath the slack water pool created by the dam of Appellant lies (R. 101) in four Counties of two States, viz, in York and Lancaster Counties in the State of Pennsylvania (64% of total area), and in Cecil and Harford Counties in the State of Maryland (35% of total area). It is the attempt upon the part of the State of Maryland by its State Tax Commission to assess for taxation 2110 acres (R. 22) of the bed of this River at a valuation of approximately 10,000% in excess of other similar, but unsubmerged, lands in the vicinity, which gives rise to this appeal.

The final disposition of this case will also determine the legality of an assesment upon a similar area of the river bed lying within the limits of Cecil County, Maryland.

Only *two-tenths of 1%* of the volume of water in the Susquehanna River which flows past the Appellant's dam arises or originates in the State of Maryland (R. 102). That is to say, of the total basin drained by the Susquehanna River, 33,000 square miles lies within the States of Pennsylvania and New York and only 65 square miles lies within the State of Maryland (R. 101). Another factor in determining the amount of power capable of development in any stream is the "head" or fall in the river available for use at the point of use. Of the total "head" of the Susquehanna available for use at Appellant's dam approximately one-half arises in the State of Pennsylvania and one-half in the State of Maryland (R. 101).

Although only a part of the physical property of the entire Conowingo Project is located in Maryland, and of that portion only a still smaller part is located in Harford County (for instance, it appears from R. 217 that only 1550 feet of the total length of the dam itself lies in Harford County, while the remaining 3,058 feet lie in Cecil County, Maryland), the said portion in Harford County has been assessed for taxation (in addition to the portion involved in the assessment now under appeal) in the very substantial sum of $9,674,333. (R. 317) *from which no appeal is pending.* Under these circumstances it is ap-

parent that the Susquehanna Power Company cannot justly be charged with an effort by this appeal to avoid payment of its fair share of the public tax burden in Harford County, Maryland.

The item appealed from applies only to an assessment in the Fifth District of Harford County. Appellant also owns "river bottom" lands in the Second District which embraces an area lying a short distance below Appellant's dam. These last mentioned lands were assessed by the County Commissioners of Harford County for the year 1929 as follows (R. 13, 15):—

"SECOND DISTRICT

203 Acres, River Bottom at $10.....$2,030.

It is of considerable interest to note that the State Tax Commission in its "reversal" (R. 316) of the County Commissioners with respect to Appellant's whole assessment in Harford County has eliminated entirely the County Commissioners' assessment of the lands in the bed of the Susquehanna River in the Second District *below* the Dam, although assessing the similar lands above the Dam at $1,113. per acre.

SPECIFICATION OF ASSIGNED ERRORS INTENDED TO BE URGED.

I.

That the Court of Appeals of Maryland erred in affirming the judgment of the Court below (the Circuit Court for Harford County) whereby real property owned by the Appellant is assessed for taxation in the State of Maryland, at a valuation given to it as "submerged lands," which includes a value attributable to the waters of the Susquehanna River, flowing over said lands in which said Appellant has no right of property, and imposes upon the property of the Appellant a

tax without due process of law, contrary to the Constitution of the United States of America, and the Fourteenth Amendment thereof.

II.

That said Court of Appeals of Maryland erred in affirming the judgment of said Court below, whereby real property owned by said Appellant is assessed for taxation in the State of Maryland at a valuation given to it as "submerged lands," which includes a value attributable to a license granted to said Appellant by the Federal Power Commission, pursuant to the Acts of Congress of the United States of America, which value attributable to said Federal license cannot be included for taxation by the State of Maryland, or any political subdivisions thereof, and the tax thus imposed deprives said Appellant of its property, without due process of law, contrary to the Constitution of the United States of America, and the Fourteenth Amendment thereof.

III.

That said Court of Appeals of Maryland erred in affirming the judgment of said Court below, approving the assessment of the tax upon the real property of said Appellant, described as "submerged lands," which formed the bed of the Susquehanna River and the waters thereof impounded by the dam constructed by said Appellant, as a Licensee under said Federal license, granted by said Federal Power Commission, which "submerged lands" at the time of the assessment thereof for taxation by the State of Maryland and its political subdivisions, and subsequent thereto were in use by said Appellant as an Agent of the United States of America, and as an instrumentality to promote navigation upon a navigable river, which is a highway of interstate commerce.

IV.

That said Court of Appeals of Maryland erred in entering a judgment, whereby property of said Appellant, a unit

under said license, granted by said Commission and an Agent and instrumentality of the United States, to promote navigation of an interstate river is assessed for taxation for State and County purposes.

V.

That said Court of Appeals of Maryland erred in affirming said judgment of said Court below, whereby said assessment of real property of the Appellant for taxation in the State of Maryland, is arrived at by a different method, and upon a higher value than other real property owned by other taxpayers on the same tax roll or located in the same taxing district, and thereby the property of said Appellant will be taken without due process of law, contrary to the Constitution of the United States of America, and the Fourteenth Amendment thereof.

SUMMARY OF ARGUMENT.

The State of Maryland has no power to assess for taxation lands in the bed of the Susquehanna River, the paper title to which is held by the Appellant, after such lands have become completely and permanently submerged in aid of navigation pursuant to the terms of the Federal License granted to Appellant.

The "submerged lands" in the bed of the Susquehanna River did not acquire a value which is subject to taxation from the waters impounded upon such lands by the erection of a dam constructed pursuant to the Federal License primarily to improve the navigability of the Susquehanna River and, secondarily, to make useful the waters passing through the dam for the purpose of generating electrical energy.

If the *submerged lands* are subject to taxation by the State of Maryland, no lawful assessment thereof can be made which exceeds the assessment of similar lands which are unsubmerged.

ARGUMENT.

The record on this appeal shows that certain of the questions presented to and disposed of by the Court of Appeals of Maryland are based upon the law of that State, and the decision of that Court upon them is final.

Together with these questions there were raised in the Court below several defences to the judgment against the Appellant which are founded upon the protection afforded by the Federal Constitution as interpreted by the decisions of this Court, and the conclusions reached upon these questions by the State Court are here presented for review.

The State Tax Commission of Maryland had before it for consideration the tax assessed upon all of the physical property of the Appellant in the State of Maryland divided between Harford and Cecil Counties. Separate decisions were rendered, and therefore two appeals from the decision of the State Tax Commission to the State Courts were taken. The final decision from which this appeal was taken covers only the decision applicable to the property of the Appellant in Harford County, but the final decision of this Court when rendered will be made applicable by agreement to the pending appeal in the State Court as to the property in Cecil County.

The physical property of the Appellant in Maryland, consisting, *inter alia*, of the dam, power plant, transmission line and industrial railroad, is shown by the record to have an aggregate cost as of 1929 of approximately $46,000,000. This total cost includes the cost of acquiring the legal title to all of the lands in Maryland required for the actual construction of the project known and described in the record as the "Conowingo Project," and also those lands which, when the project was complete and the pool made by the dam across the Susquehanna River, might be affected, or be claimed to have been affected, and represents expenditures made to avoid possible suits for damage, or costs of titles requiring condemnation. Included in the "costs of lands" were the qualified paper titles to lands in the bed of the Susquehanna River outstanding at the time the project

was proposed. These titles represented lands continuously or from time to time covered by the waters of the Susquehanna River, having no value for practical use, but constituting a menace to the orderly progress of the work because of possible delays incident to condemnation, if not otherwise previously acquired.

The period of acquisition of title to the lands in question, which may be called the "submerged lands," extended over many years (the early plans for the development of the project having been inaugurated in 1782). The exact cost of acquisition is not ascertainable and therefore not to be found in the record of this case, but the assessed value of such "submerged lands" shown by this record was not in excess of ten dollars per acre prior to the year 1929, which is the taxable year for Harford County in the State of Maryland here under consideration.

The completion of the Conowingo Project resulted in the record ownership by the Appellant in the State of Maryland of (1) the dam across the Susquehanna River, on which was constructed a state highway for vehicles and pedestrians, (2) a hydro-electric power plant, (3) the transmission lines, (4) industrial railroad and rights of way from Havre de Grace to the power plant, (5) lands and buildings above the water line of the pool in the bed of the Susquehanna River (including administration buildings and farm lands in excess of those found to be needed for the project, and the bed of the Susquehanna River below the dam), and (6) *lands constituting the bed of the Susquehanna River* and therefore the bed of the pool above the dam, consisting in the aggregate in Harford County, Maryland, of 2110 acres.

It is only so much of the tax assessed against the submerged lands in the bed of the Susquehanna River for the year 1929 by the taxing authorities of the State of Maryland that was appealed from, the tax assessed against all of the other property of this Appellant hereinabove described having been unappealed from and paid. The assessed value of this property upon which this Appellant

paid taxes for the year 1929 to Harford County in the State of Maryland was the sum of $9,751,560. on which the tax aggregated $166,422.27.

The Appellant defended its refusal to pay the tax assessed upon the "submerged lands" constituting the bed of the Susquehanna River and valued for taxation at $2,349,300, for reasons among which those now for consideration by this Court are the following:—

Point 1.

The State of Maryland has no power to assess for taxation lands in the bed of the Susquehanna River, the paper title to which is held by the Appellant, after such lands have become completely and permanently submerged in aid of navigation pursuant to the terms of the Federal License granted to Appellant.

Point 2.

The submerged lands in the bed of the Susquehanna River under the pool, the flow of the water from which is made available by the dam and power plant to generate electrical energy, were not available for such use by the Appellant prior to the granting of the Federal License by the Federal Power Commission under authority from the Congress of the United States, and any value attributable to such lands in the bed of the Susquehanna River by such use results from the exercise of the Federal grant and cannot be made the basis for taxation by the State of Maryland.

Point 3.

If the submerged lands are subject to taxation by the State of Maryland at all, the taxable value thereof lawfully cannot exceed their value as land, and no assessment thereof is lawful which exceeds that of other similar, but unsubmerged, lands.

Point 1. The State of Maryland has no power to assess for taxation lands in the bed of the Susquehanna River, the paper title to which is held by the Appellant, after such lands have become completely and permanently submerged in aid of navigation pursuant to the terms of the Federal License granted to Appellant.

The Susquehanna River is a navigable stream. Of this fact there can be no doubt. The bed thereof was declared to be "a public highway" by the State of Maryland as early as 1798, by the State of Pennsylvania in 1801, and again by the State of Maryland in 1814. This Court in the case of *Shively* v. *Bowlby*, 152 U. S. 1 (1893), said (at page 31):—

> "The earliest judicial statement of the now prevailing doctrine in this country as to the title in the soil of rivers really navigable, although above the ebb and flow of the tide, is to be found in a case involving the claim of a riparian proprietor to an exclusive fishery in the Susquehanna River, in which Chief Justice Tilghman in 1807, after observing that the rule of the common law upon the subject had not been adopted in Pennsylvania, said: 'The common law principle is, in fact, that the owners of the banks have no right to the water of navigable rivers. Now the Susquehanna is a navigable river, and therefore the owners of its banks have no such right. It is said, however, that some of the cases assert that by navigable rivers are meant rivers in which there is no flow or reflow of the tide. This definition may be very proper in England, where there is no river of considerable importance as to navigation, which has not a flow of the tide; but it would be highly unreasonable when applied to our large rivers, such as the Ohio, Allegheny, Delaware, Schuylkill, or

Susquehanna and its branches.' Carson *v.* Blazer, 2 Binney, 475, 477, 478."

The Supreme Court of Maryland in the case of *Havre de Grace* v. *Harlow*, 129 Md. 265 (1916), reviewed some of the history of commerce on the Susquehanna River in Maryland, *inter alia*, as follows (*id.* p. 275) :—

"The downstream navigation seems to have been of two classes—canal boats, which had been built further up the stream, which were too wide to admit of their passage through the locks of the canals, and which were brought down unloaded, to be taken for use upon the Erie and other canals; secondly, arks or rafts, which were made of logs or lumber, and which, though drawing at the most between three and four feet of water, could not be brought down when the river was in its normal state of flow, but only at the times of flood, when the water was about four feet above its normal height. The season for these seems to have been approximately two months in the spring of the year, though in one exceptional season there is evidence tending to show that they came down during every month of the year. Occasionally these rafts bore upon them some slight loads, consisting of potatoes, which were sold to those living along the river's banks, a little pig iron, on one occasion a barrel of whiskey, and on another certain family furniture. These loads did not, however, constitute the important traffic upon the river. That was the bringing down of the logs, most of which appear to have been disposed of at saw mills along the way, while some after reaching tide-water were rafted for the lumber market of New York, Philadelphia and Baltimore. A half century and more ago this lumber traffic upon the river is testified to have been very considerable in volume, but that it has gradually and steadily fallen off, and that the last of the commerce of this character to come down the river was fifteen years ago. The extinction of this com-

> merce was due, however, not to the erection of bridges or dams across the river, but to entirely different causes, viz, the formation of considerable bars at the mouths of some of the creeks emptying into the river, thus forming natural obstacles to its navigation, and more especially to the fact that the merchantable lumber upon the upper reaches of the river had been cut off for a distance of approximately thirteen miles back from the stream, so that the cost of hauling to the river was as great, if not actually greater, than the cost of its transportation by rail. It was owing to causes such as these that the year 1902 witnessed but two rafts coming down the river, where theretofore in the fifties and sixties of the last century, they had been numbered by the hundreds."

The Court finally held in said Havre de Grace case that no injunction should issue against the building of a dam under Appellant's 1908 Charter because (p. 278):—

> "After a full consideration of the facts as testified to in this case, and a careful examination of the Act of 1908, this Court is of opinion that the proposed dams, if constructed in accordance with the requirements of the Act, are not such obstructions to the navigable character of the river as to warrant the granting of the injunction sought by the bill."

The above cited decisions show that the Susquehanna River in Maryland has been found as a fact to be a navigable river, and even though interstate traffic upon it had diminished it was so classified as late as 1916. Subsequent thereto, as this record shows, the Federal Power Commission, acting under authority of the Federal Water Power Act of 1920, found as a fact (R. 290) that the Susquehanna River was navigable and in aid of navigation granted to this Appellant the Federal License for the building of the Conowingo Dam to improve the navigation on the Susquehanna River. The situation is similar to that existing on the Desplaines River,

and with reference to the exclusive control of the United States over that river, because it was to be classed as a navigable river, this Court, in the opinion of Mr. Justice Pitney in *Economy Light Company* v. *United States*, 256 U. S. 113 (pp. 123-124), says:—

> "We concur in the opinion of the Circuit Court of Appeals that a river having actual navigable capacity in its natural state and capable of carrying commerce among the States, is within the power of Congress to preserve for purposes of future transportation, even though it be not at present used for such commerce, and be incapable of such use according to present methods, either by reason of changed conditions or because of artificial obstructions. And we agree that the provisions of §9 of the Act of 1899 (30 Stat. 1151) apply to such a stream. The act in terms applies to 'any * * * navigable river, or other navigable water of the United States'; and, without doing violence to its manifest purpose, we cannot limit its prohibition to such navigable waters as were, at the time of its passage, or now are, actually open for use. The Desplaines River, after being of practical service as a highway of commerce for a century and a half, fell into disuse, partly through changes in the course of trade or methods of navigation, or changes in its own condition, partly as the result of artificial obstructions. In consequence, it has been out of use for a hundred years; but a hundred years is a brief space in the life of a nation; improvements in the methods of water transportation or increased cost in other methods of transportation may restore the usefulness of this stream; since it is a natural interstate waterway, it is within the power of Congress to improve it at the public expense; and it is not difficult to believe that many other streams are in like condition and require only the exertion of federal control to make them again important avenues of commerce among the States. If they are

> to be abandoned, it is for Congress, not the courts, so to declare. The policy of Congress is clearly evidenced in the Act of 1899, and, in the present case at least, nothing remains but to give effect to it."

This language may be used appropriately to answer the contention of the Appellee that there is no basis for the conclusion that prior or subsequent to the building of the Conowingo Dam the Susquehanna River was a navigable stream.

Even the Maryland Court of Appeals in this case, in spite of its following cautious comment (R. p. 329) :—

> "Whether the Susquehanna River is in law or fact navigable is a question not presented by this record and not considered by this Court, and nothing in this opinion contained is to be construed as in any sense determining that question or determining the validity of any legislation relating thereto,"

nevertheless said in its opinion (R. p. 329) with respect to the Susquehanna River:—

> "That it is a navigable stream within the definition of 'navigable waters' found in the 'Water Power Act' * * * *may for the purposes of this case be assumed.*"

For the purposes of this case, therefore, it would seem that we start with the proposition that the subject of the assessment here appealed from *is the bed of a navigable river.*

The technical title to the bed of this navigable river *to the extent that the State of Maryland had the power to grant such title,* is in the Appellant. There is no dispute on this point. The extent and character of that title, however, is vastly different from Appellant's title to the neighboring "fast" or shore lands, none of which are involved in this appeal. The kind and character of Appellant's technical title to these "river bottom" or "submerged" lands

has been clearly defined by this Court in a number of earlier cases from which the following have been selected:—

In *Philadelphia* v. *Stimson*, 223 U. S. 605 (1912), the Chief Justice of this Court, in discussing the title to the bed of the Ohio River, in Allegheny County, Pennsylvania, said (p. 634):—

> "To this stream, as a highway of commerce, the power of Congress extended; a power which 'acknowledges no limitations other than are prescribed in the Constitution.' Gibbons *v.* Ogden, 9 Wheat. 1, 196. The exercise of this power could not be fettered *by any grant made by the State of the soil which formed the bed of the river,* or by any authority conferred by the State for the creation of obstructions to its navigation. 'Commerce includes navigation. The power to regula- commerce comprehends the control for that purpose, and to the extent necessary, of all the navigable waters of the United States which are accessible from a State other than those in which they lie. For this purpose they are the public property of the nation, and subject to all requisite legislation by Congress. This necessarily includes the power to keep them open and free from obstructions to their navigation, interposed by the States or otherwise; to remove such obstructions when they exist; and to provide, by such sanctions as they may deem proper, against the occurrence of evil and for the punishment of offenders. For these purposes, Congress possesses all the powers which existed in the States before the adoption of the national Constitution, and which have always existed in the Parliament in England.' Gilman *v.* Philadelphia, 3 Wall. 713, 725.
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> "Nor is the authority of Congress limited to so much of the water of the river as flows over the bed of forty years ago. The alterations produced in the course of years by the action of the water do not restrict the exercise of Federal control in the regulation

of commerce. Its bed may vary and its banks may change, but the Federal power remains paramount over the stream, and this control may not be defeated by the action of the State in restricting the public right of navigation within the river's ancient lines. The public right of navigation follows the stream (Rolle's Abr. 390; Carlisle *v.* Graham, L. R. 4 Ex. 361, 367, 368) and the authority of Congress goes with it."

In the case of *United States* v. *Chandler-Dunbar Water Power Co.*, 229 U. S. 53 (1913), this Court again defined the nature of private ownership in the bed of a navigable river as follows (p. 62):—

"It is subordinate to the public right of navigation and however helpful in protecting the owner against the acts of third parties, is of no avail against the exercise of the great and absolute power of Congress over the improvement of navigable rivers. That power of use and control comes from the power to regulate commerce between the States and with foreign nations. It includes navigation and subjects every navigable river to the control of Congress. All means having some positive relation to the end in view which are not forbidden by some other provision of the Constitution, are admissible. If, in the judgment of Congress, the use of the bottom of the river is proper for the purpose of placing therein structures in aid of navigation, it is not thereby taking private property for a public use, for the owner's title was in its very nature subject to that use in the interest of public navigation. If its judgment be that structures placed in the river and upon such submerged land, are an obstruction or hindrance to the proper use of the river for purposes of navigation, it may require their removal and forbid the use of the bed of the river by the owner in any way which in its judgment is injurious to the dominant right of navigation."

The ownership by the Appellant prior to the construction of the "Conowingo Project" gave it no private right to use the waters flowing over it to develop water power and therefore there was no such potential value attributable to these lands available for taxation. Since the completion of the dam the lands have not changed their character but their use has been permanently devoted under the Federal License to the improvement of navigation and of the exclusion of other possible uses than the impounding of these waters. No structure has been erected upon them—the difference is that the waters of the river rest upon them longer and to a greater depth before passing beyond the dam to meet the tidal waters below. Can it be said that because of control of the flow of the Susquehanna River by the "Conowingo Dam" the submerged lands above the dam have increased in taxable value, solely as land, from $10. per acre to $1113.00 per acre?

The decision of this Court in *Economy Light Company* v. *United States,* 256 U. S. 113, is clear authority for the assertion by the Appellant that regardless of the paper title conveyed to it by or with the consent of the State of Maryland, there was no power vested in the Appellant by such title to the full use and enjoyment of the lands in the bed of the Susquehanna River without the consent of the United States, because of the provisions of the Act of Congress of March 3, 1899 (30 Stat. 1151), by which the authority of Congress over all navigable waters was asserted.

The foregoing case of *United States* v. *Chandler-Dunbar* (229 U. S. 53) is of still further significance in the present case because it was there flatly decided that in a condemnation proceeding by the United States of a Power Company's title to the banks and bed of a navigable stream no compensation whatever will be allowed with respect to the Power Company's ownership of the bed of the river. The contention made by the Power Company in that case to support the lower court's award to it of $550,000. as "the estimated value of the water power" was (p. 61):—

> "* * * the claim is that the United States in the exercise of the power to regulate commerce, may not

exclude the rights of riparian owners to construct in the river and upon their own submerged lands such appliances as are necessary to control and use the current for commercial purposes, provided only that such structures do not impede or hinder navigation and that the flow of the stream is not so diminished as to leave less than every possible requirement of navigation, present and future."

In rejecting this claim the Supreme Court said (p. 69):—

"It is a little difficult to understand the basis for the claim that in appropriating the upland bordering upon this stretch of water, the Government not only takes the land but also the great water power which potentially exists in the river. The broad claim that the water power of the stream is appurtenant to the bank owned by it, and not dependent upon ownership of the soil over which the river flows has been advanced. But whether this private right to the use of the flow of the water and flow of the stream be based upon the qualified title which the company had to the bed of the river over which it flows or the ownership of land bordering upon the river, is of no prime importance. In neither event can there be said to arise any ownership of the river. Ownership of a private stream wholly upon the lands of an individual is conceivable; *but that the running water in a great navigable stream is capable of private ownership is inconceivable.*"

The Maryland Court of Appeals failed to appreciate the applicability of the principles of law laid down in the Chandler-Dunbar case or it would not have made the following statement in its opinion (Rec. 337), viz.:—

"The appellant used the submerged land to impound water to furnish power to turn the wheels of its generating units. But the use of the impounded water for navigation will not on the one hand lessen the power which it delivers for that use nor will the fact that it delivers power affect its use for navigation. Both uses

> are complementary, neither is exclusive, both are valuable one is essentially public in its nature, not the subject of private ownership, and therefore not taxable, while the other is an incident of the ownership of land submerged by the pent up water, which land may be privately owned and because of its utility for impounding water may be valuable and may be taxed. City of Lowell *vs.* Co. Com. of Middlesex, 9 L. R. A. 363. Farnham on water, secs. 432, 433, Cooley on Taxation, secs. 568, 1065, 1162."

None of the authorities cited by the Maryland Court involve navigable waters of the United States and this Court expressly held in the *Chandler-Dunbar Case* (229 U. S. 76), that the owner of the river bed had *"no right to appropriate the current to his own commercial use."*

The Appellee and the learned Court below rely upon the decision of this Court in *Baltimore Shipbuilding Company* v. *Baltimore,* 195 U. S. 375, as conclusive of the right to tax the Appellant on the valuation given to the bed of the Susquehanna River, presumably because the subject matter of the two cases was a right in real property. The power to tax claimed in the Baltimore Shipbuilding Company case appears to have been sustained because the Court found (p. 382) that the United States had "no easement or present right *in rem.*" On the contrary, in this case the *rem* is the bed of the Susquehanna River, and in the Chandler-Dunbar case, and other cases, which have considered the navigable waters of the United States, this Court has held that as to such *rem* it is subject at all times to the use and control of the United States. In *Philadelphia* v. *Stimson,* 223 U. S. 605, p. 634, it was said of the Ohio River, also a navigable river as the Susquehanna River has been declared to be,

> "To this stream as a highway of commerce, the power of Congress extended; a power which 'acknowledges no limitation other than as prescribed in the Constitution.'"

If under the positive ruling of the Chandler-Dunbar case, the technical title of the Appellant to the submerged lands in question does not include title to the only thing which might give them a value, by what possible theory can the State of Maryland lawfully assess those submerged lands for taxation against this Appellant at the rate of over a thousand dollars an acre?

In the cases of *Central Railroad Co.* v. *Jersey City*, 209 U. S. 473, and *Leary* v. *Jersey City*, 248 U. S. 328, the question as to the power of a State to tax the bed of navigable waters devoted by authority of Congress and action by the duly constituted authorities of the United States to an improvement for navigation was not raised because in both cases the argument and decision related to the authority over the land under the pact between the State of New Jersey and the State of New York, which authority was in dispute.

In the pact, as will be seen by the records in both of those cases, the approval given by the United States through Congress (Act of Congress June 28, 1834, 4 Stat. L. 808) was conditioned by the reservation therein made:—

> "Provided, That nothing therein contained shall be construed to impair or affect the right of jurisdiction of the United States in and over the islands or waters which form the subject of this agreement."

The lands which were the subject matter of those decisions were harbor lands on which improvements had been made or were intended for use in connection with the use of the uplands. None of the land in question had been devoted by action of the United States, under its reservation in the pact, to use for or as an improvement to the navigation of the waters subject exclusively to Federal jurisdiction.

In the case now before this Court no question is raised similar to the question in the Jersey City cases, relied upon by the Appellee, although this question may have been for consideration prior to the building of the Conowingo dam,

when the lands then owned by the Appellant, at least at low water, were available for other uses analogous to the uses of the lands described in the Jersey City cases.

Whether or not prior to the exercise of the power exclusively vested in the United States, which has resulted in the complete submerging of the lands in question in aid of navigation in the Susquehanna River, these lands were lawfully subject to taxation by the State of Maryland, is not under consideration, as the taxes upon them at the rate of $10. per acre were paid without protest.

The question before this Court is one not decided by any previous decisions, and, is whether the submerged lands under navigable waters subjected and adopted by the proper authorities of the United States as an instrumentality for the improvement of such navigable waters are still subject to taxation by the State in which they are located?

Point 2. The submerged lands in the bed of the Susquehanna River under the pool, the flow of the water from which is made available by the dam and power plant to generate electrical energy, were not available for such use by the Appellant prior to the granting of the Federal License by the Federal Power Commission under authority from the Congress of the United States, and any value attributable to such lands in the bed of the Susquehanna River by such use results from the exercise of the Federal grant and cannot be made the basis for taxation by the State of Maryland.

The Chandler-Dunbar case (*supra*) and the authorities which have followed it were urged upon the learned court below to show that there was no taxable value in the lands in the bed of the Susquehanna River covered by the paper title held by the Appellant prior to the granting of the Federal License by the Federal Power Commission.

Practical evidence of this asserted fact was presented in the nominal assessed value in previous years of $10.00 per

acre. It was contended before the learned court below that the utilization of the water flowing over the lands in the bed of the Susquehanna River was made possible solely because of the position acquired by the Appellant as a Licensee of the United States of America under the License granted by the Federal Power Commission and that if the lands attained a value thereby, attributable to the Federal License, such value, thus created, afforded no basis for taxation by the State of Maryland.

The learned court below, however, disposed of this contention as follows (Record, pp. 331, 332, 333):—

> "The mere fact that the impounding of water by its dam may to some extent facilitate navigation for a short distance, is incidental and secondary to its primary purpose of manufacturing and selling electric energy for profit, and it is not required to do any act or thing in aid of the Federal government except that it is permitted or licensed to complete a project for its own profit which incidentally may effect beneficially or otherwise the navigability of the river."
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> * * * * * * *
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> "The principal and controlling facts are that the licensee desired to establish on the Susquehanna river a power project to make money for its stockholders, that to accomplish that purpose it required a Federal license, and that the Federal government in consideration for that license exacted of the licensee certain concessions which may be valuable or meaningless accordingly as they may be affected by conditions which cannot now be predicted. But even though the licensee is required to do every act required by the license, there is nothing in the nature or the extent of its obligation which can support the inference that the payment by it of its proportionate share of the public taxes will in any degree impair its capacity to render to the United States the full service stipulated as a consideration for the license.

> "That the numerous and extensive power projects located on navigable waters, licensed by the Federal Power Commission, in the aggregate representing vast capital expenditures, and earning for their proprietors liberal returns on their investment, should under the conditions stated be regarded as Federal agencies and as such exempt from the burden of taxation common to all who receive the benefits and the protection of State governments it is imposed to support would be a wholly unreasonable and arbitrary conclusion."

The characterization by the Court below of the purpose of the Appellant to use part of its property for commercial profit cannot be extended to justify a tax, by indirection, of the property clearly entitled to the immunity herein asserted for it. The decision of this Court in *Macallen* v. *Massachusetts*, 279 U. S. 620, so holds (p. 629):—

> "'These constitute special and compelling reasons why courts, in scrutinizing taxing acts like that here involved, should be acute to distinguish between an exaction which in substance and reality is what it pretends to be, and a scheme to lay a tax upon a non-taxable subject by a deceptive use of words. The fact that a tax ostensibly laid upon a taxable subject is to be measured by the value of a non-taxable subject at once suggests the probability that it was the latter rather than the former that the law-maker sought to reach. If inquiry discloses persuasive grounds for the conclusion that such is the real purpose and effect of the legislation, the tax cannot be upheld without subverting the well-established rule that '* * * what cannot be done directly because of constitutional restriction cannot be accomplished indirectly by legislation which accomplishes the same result * * * constitutional provisions, whether operating by way of grant or limitation, are to be enforced according to their letter and spirit, and cannot be evaded by any legislation which, though not in terms trespassing on

the letter, yet in substance and effect destroy the grant or limitation.' Fairbank *v.* United States, 181 U. S. 283, 294, 300."

It would naturally be assumed by a reading of the opinion of the learned court below that the Appellant was claiming before that court a right of exemption from taxation for the physical property used in the generation of electrical energy after the water of the Susquehanna River passed over the submerged land in question through the outlets in the dam which had impounded them.

The opinion ignores the conceded facts upon the record that as to such facilities no question of exemption was being raised. The tax levied upon those facilities was not in dispute. This tax aggregated for the year 1929 the sum of $166,422.27 and was paid to Harford County.

Whether or not, as to the physical assets used primarily in the generation of electrical energy, by reason of the interest which the United States has in the entire Conowingo Project as licensor under the terms of the Federal License, there was an exemption available to this Appellant is a question not before the Court of Appeals of Maryland and is not argued before this Court.

The status of the particular property herein referred to (*i. e.*, "submerged lands") of the Appellant as a Federal agency and its right to exemption thereof from taxation by the State of Maryland, is determined by a consideration of its relationship to the United States as an instrumentality whereby the Federal government has improved and provides for the maintenance of facilities for navigation in the Susquehanna River for a distance of at least 14 miles.

It is solely because of the finding that the creation of the pool in Maryland and Pennsylvania was in aid of navigation that the Federal Power Commission asserted authority to issue the Federal License. Pursuant to the terms of the Federal License (Record, pp. 288 to 312) the Appellant undertook its work thereunder for the purposes

therein stated, which *inter alia,* were (Record, pp. 290, 292):—

> "Whereas, The Commission finds that said project, as hereinafter described, will be best adapted to a comprehensive scheme of improvement and utilization of said waterway for the purposes of navigation, of water power development and of other beneficial uses; and
>
> "Whereas, The Commission, did, on the second day of January, 1925, find that the contemplated improvement is desirable and justified in the public interest for the purpose of improving or developing a waterway, namely, said Susquehanna River, for the use or benefit of interstate and foreign commerce, a certified copy of the records of the Commission containing such finding being hereto attached; and"
>
> * * * * * * *
>
> "The Commission hereby issues this license to the licensees for the purpose of constructing, operating and maintaining certain project works necessary or convenient for the development and improvement of navigation and for the development, transmission, and utilization of powers across, along, from or in said Susquehanna River, and constituting a part of the project hereinafter described;"

The project when completed, as heretofore stated, produced as an improvement to the navigation of the Susquehanna River a 14-mile long lake, having a depth in places of approximately 90 feet, and forming one link in a chain of similar lakes described heretofore in the Statement of the Case. (See Photograph attached to this Brief.)

The learned Court of Appeals disposed of the Appellant's contention that in maintaining such an aid to the navigation of the Susquehanna River the lands so used by it as a Federal agency were exempt from taxation by the following language (Record, p. 331):—

> "But assuming that it is a Federal agency after careful consideration of the very forcible and able arguments offered in support of it, we are unable to find any substantial support for the Power Company's contention that it is such a Federal agency as is necessarily exempt from State taxation, or that the payment to the state of just and reasonable taxes on its property will to any extent prevent it from discharging every duty and performing every function imposed upon it either by its agreement or by law with respect to the Federal government."

The Appellant asserts that the facts shown in this record clearly demonstrate that to the extent of its "submerged lands" it is a Federal instrumentality of the class protected by the decisions of this Court from state taxation.

The tax levied for the year 1929 is in itself a burden upon the instrumentality in use by the Appellant as a Federal aid to navigation and creates an interference with the exercise of the Federal power prohibited by the Federal Constitution and of a nature against which the Appellant is entitled to the protection of the decisions of this Court.

Panhandle Oil Company v. *Knox*, 277 U. S. 218:—

This case involved the validity of a State tax upon the sale of gasoline to the United States for the use of its Coast Guard Fleet in service in the Gulf of Mexico and its Veterans' Hospital at Gulfport. The State Supreme Court held the exaction to be a valid privilege tax measured by the number of gallons sold and that it did not constitute a tax upon instrumentalities of the Federal Government. In reversing this decision Mr. Justice Butler, speaking for this Court, said (p. 221):—

> "The United States is empowered by the Constitution to maintain and operate the fleet and hospital. Art. 1, § 8 (ref. to Fed. Const.). That authorization and laws enacted pursuant thereto are supreme

(Art. 6); and, in case of conflict, they control state enactments. The states may not burden or interfere with the exertion of national power or make it a source of revenue or take the funds raised or tax the means used for the performance of Federal functions."

Long v. *Rockwood,* 277 U. S. 142:—

This case involved the validity of a Massachusetts income tax upon royalties derived from patents issued by the Federal Government. The Supreme Court of the State held such an imposition would amount to a tax upon the patent right itself and was prohibited by the Federal Constitution and the Supreme Court said "We agree with that conclusion." After citing the provisions of the Constitution empowering Congress "to promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries"; and the various enactments of Congress pursuant thereto, this Court, speaking by Mr. Justice McReynolds, said (p. 147):—

> "The power to exclude others granted by the United States to the patentee subserves a definite public purpose—to promote the progress of science and useful arts. The patent is the instrument by which that end is to be accomplished. It affords protection during the specified period in consideration of benefits conferred by the inventor. And the settled doctrine is that such instrumentalities may not be taxed by the states."

On January 2, 1925, the Federal Power Commission made its specific findings to the effect heretofore quoted with respect to the then contemplated Conowingo Project and under date of February 20, 1926, issued its License (Record, p. 292):—

> "for the purpose of constructing, operating and maintaining certain project works necessary or convenient

for the development and improvement of navigation and for the development, transmission, and utilization of powers across, along, from or in said Susquehanna River, and constituting a part of the project hereinafter described;"

By means of the said property and the project works so erected thereon there has been created and is being maintained, for the primary purpose of interstate navigation, a pool of slack water extending for a distance of approximately fourteen miles from a point in Maryland to a point in Pennsylvania. Without the authority from Congress conferred by said License, granted pursuant to said Act, neither this Appellant nor any other person or corporation could in such manner lawfully utilize said property or build or maintain said project works. *Alabama Power Company* v. *Gulf Power Company*, 283 Fed. 606.

In *California* v. *Pacific Railroad Co.*, 127 U. S. 1, quoted with approval by Mr. Justice McReynolds in Long *v.* Rockwood (*supra*), this Court seems to support this contention of the Appellant in the following language (p. 41):—

"In view of this description of the nature of a franchise, how can it be possible that a franchise granted by Congress can be subject to taxation by a State without the consent of Congress? Taxation is a burden, and may be laid so heavily as to destroy the thing taxed, or render it valueless. As Chief Justice Marshall said in McCulloch *v.* Maryland, 'the power to tax involves the power to destroy.' Recollecting the fundamental principle that the Constitution, laws and treaties of the United States are the supreme law of the land, it seems to us almost absurd to contend that a power given to a person or corporation by the United States may be subjected to taxation by a State. The power conferred emanates from, and is a portion of, the power of the government that confers it. To tax it, is not only derogatory to the dignity, but subversive

of the powers of the government, and repugnant to its paramount sovereignty. It is unnecessary to cite cases on this subject. The principles laid down by this court in McCulloch *v.* Maryland, 4 Wheat. 316; Osborn *v.* The Bank of the United States, 9 Wheat. 738; and Brown *v.* Maryland, 12 Wheat. 419; and in numerous cases since which have followed in their lead, abundantly sustain the views we have expressed."

Point 3. If the submerged lands are subject to taxation by the State of Maryland at all, the taxable value thereof lawfully cannot exceed their value as land, and no assessment thereof is lawful which exceeds that of other similar, but unsubmerged, lands.

Under the statutory law of Maryland (referred to by the Court below, Rec. 338) the State Tax Commission was given in the act of its creation:—

> "The final determination of assessments of all property in all the counties, cities, towns and villages of the State, to the end that all taxable property shall be placed upon the assessment books and *equalized* between persons, firms and corporations in all the counties, districts, cities, towns and villages of the State, so that all persons, firms and corporations *shall be assessed alike for like kinds of property.*" 1924 Maryland Code, Article 81, Section 249, Paragraph 2.

The learned Court of Appeals has held that the land in the bed of a navigable river can be considered as a thing separate and distinct from the water over it (Rec. 336).

The learned Court of Appeals has also held that no value in the assessment of "submerged lands" by the State Tax Commission was given by reason of the Federal License or franchises but that the land was taxed as such, even though not divided into parcels for separate taxation.

To support its proposition that the bed of a navigable stream may be the subject of private ownership, the Court of Appeals cites its earlier case of *Browne* v. *Kennedy*, 5 H. & J. 195. It is submitted that the facts in the Browne case bear no analogy to the instant case, for there Jones' Falls in Baltimore City had been diverted entirely from its bed into a canal and the controversy in ejectment was between the contiguous proprietors *over the title to the then exposed dry bed.* In *Morris* v. *United States*, 174 U. S. 196, this Court, in referring to the Browne case, *supra*, as well as the later Maryland case of *Wilson* v. *Inloes*, 11 G. & J. 359, summarized the Maryland law as declared in these cases to be as follows (p. 238):—

> "The State has the right to grant the soil covered by a navigable water subject to the public or common right of navigation and fishery, and inferentially that a title originating in a patent issued under general law from the Land Office attached to the land and gave a right of possession *when the waters ceased to exist.*"

It would seem from the above that the assessment upon this theory must be limited to that value which the land in the bed of the Susquehanna River, to which the Appellant has the paper title, would have "when the waters ceased to exist" and that for the purpose of taxation in 1929, that event must be assumed to have happened and such value then available to the holder of the paper title. This assumption was a fact prior to the construction of the Conowingo Dam as to a substantial part of the bed of the Susquehanna River during the periods of low water, and during years prior to 1929 these lands carried a taxable value of $10. per acre. The value given by the State Tax Commission for the year 1929 to rocky hill sides owned by Appellant was at the rate of $20. per acre (Rec. p. 317), although the testimony presented for the Appellant, of record in this case, was to the effect that untillable farm land owned by other taxpayers in the neighborhood, such as wooded land, carried the uniform assessment of $10. an acre, while rocky hill sides

carried no assessment at all against *other* taxpayers (Rec. p. 114).

The Court below, however, brushed aside this testimony of the Appellant by referring to it (Rec. p. 343) as:—

> "some more or less meaningless testimony as to the value of farm land in the neighborhood."

and declared the problem of the State Tax Commission (Rec. p. 348) to be free from the duties of comparison:—

> *"because of the unique character of the project there was no other property within the State which was like it, which could be used as a standard to measure its value."*

The learned Court of Appeals of Maryland has sustained what the Appellant contended was an unlawful assessment by the State Tax Commission, regardless of its apparently excessive valuation when compared with the assessment of other lands in Maryland, *on the theory that there was no basis for comparison* and therefore the Commission was entitled to use its best judgment in fixing the utilizable value of the bed of the Susquehanna River as a whole (Record, p. 341):—

> "The real value of these lands lies in the fact that they form a natural basin through which a large river flows and within a few miles falls nearly one hundred feet, and that by the erection of a dam across the only outlet from that basin, the waters of that river may be impounded so as to generate nearly six hundred thousand horse power. To say that its utility for that purpose adds nothing to the value of the land, or, what in effect is the same thing to say that the value created by that utility cannot be taxed because such a tax would be imposed upon flowing water simply ignores the facts."

The further conclusions of the learned Court below show that there is no limit to which the opinion of the taxing

authorities for the State of Maryland in the future may increase the burden carried by the Appellant's "improved facilities for the navigation of the Susquehanna River."

The learned Court below uses language which put the bed of the Susquehanna River in a class by itself for taxation in the State of Maryland. The limit of its valuation is obviously only the desire of the taxing authorities for funds (Record, pp. 338, 339):—

> "In assessing appellant's property therefore the Commission was bound to ascertain and declare its actual fair value and to assess it accordingly, but in approaching that problem it was confronted by certain difficulties inherent in the nature of the undertaking. First, there was the absence of any general market for property of that character, because the value of the submerged lands depended so largely upon the contingency that capital could be secured to install the expensive and extensive equipment necessary to develop their latent possibilities, that lands could not well be sold at their real value unless sold as a part of or as ancillary to an entire project which included the structures and machinery needed to realize their highest utility. Again because of the unique character of the project *there was no other property within the state which was like it, which could be used as a standard to measure its value.*"

Appellant now submits that if the submerged lands in question are to be assessed at all, they must be assessed without taking into consideration any value attributable to the waters flowing over them or attributable to the Federal License, and therefore they must be assessed as an area of waste land covered with rocks and boulders. If any other land of a similar character can be found in the neighborhood the assessed valuation must be comparable to the value placed upon such other land. It is for this reason that testimony of the assessed value of all other land in the neighborhood was submitted by Appellant. This testimony (Rec. pp.114-

117), shows clearly that there is a uniform classification of non-tillable lands in this taxing district (Harford County), with assessed values ranging as follows (Rec. pp. 114-117):

	Range of Assessed Value	
Classification	*Minimum*	*Maximum*
"Wooded Land"	$10.00	$10.00
"Pasture" or "Standing Pasture"	$15.00	$30.00

and the witness (Rec. p. 114) made this significant statement:—

> "I mean that wooded land is always assessed at $10.00 an acre and rocky hill sides are never assessed at anything that I have ever seen, and I have taken the lists, one hundred lists, and checked them and have never found a rocky hill side assessed at anything."

It is apparent from the foregoing that these "submerged lands," if not exempt, should be assessed at "the regular county rates" (R. 108) which is either $10. per acre or nothing at all.

CONCLUSION.

It would seem to be indisputable that had the Federal Government decided to erect a dam across the Susquehanna River by the expenditure of public funds and by reason thereof had denied the application of the Appellant for a license from the Federal Power Commission, the pool thereby created (14 miles in length) would have improved the navigability of the Susquehanna River without changing the character of the lands in the bed of the river, the paper title to which could have continued in this Appellant. Under the applicable decisions of this Court it seems clear that this Appellant would have had no grounds to complain of such an improvement of the navigation of the Susquehanna River,

nor would it have been entitled to damages by reason of this use of the bed of the river to which it had paper title.

If such had been the action by the Federal Government, could the State of Maryland then lawfully levy a tax upon the lands forming the bed of the pool so created, the paper title to which remained in this Appellant?

If we assume that the Federal Government at its own expense had erected the Conowingo Dam, and thereafter, by a license from the Federal Power Commission, had granted permission to this Appellant to build a hydro-electric plant below the dam to use the waters impounded by the dam, would the exercise of such Federal authority by this Appellant create a power in the State of Maryland to levy a tax upon the lands of this Appellant forming the bed of the river above the dam which had been constructed by the Federal Government in aid of navigation?

The judgment of the Court of Appeals of the State of Maryland should be reversed.

Respectfully submitted,

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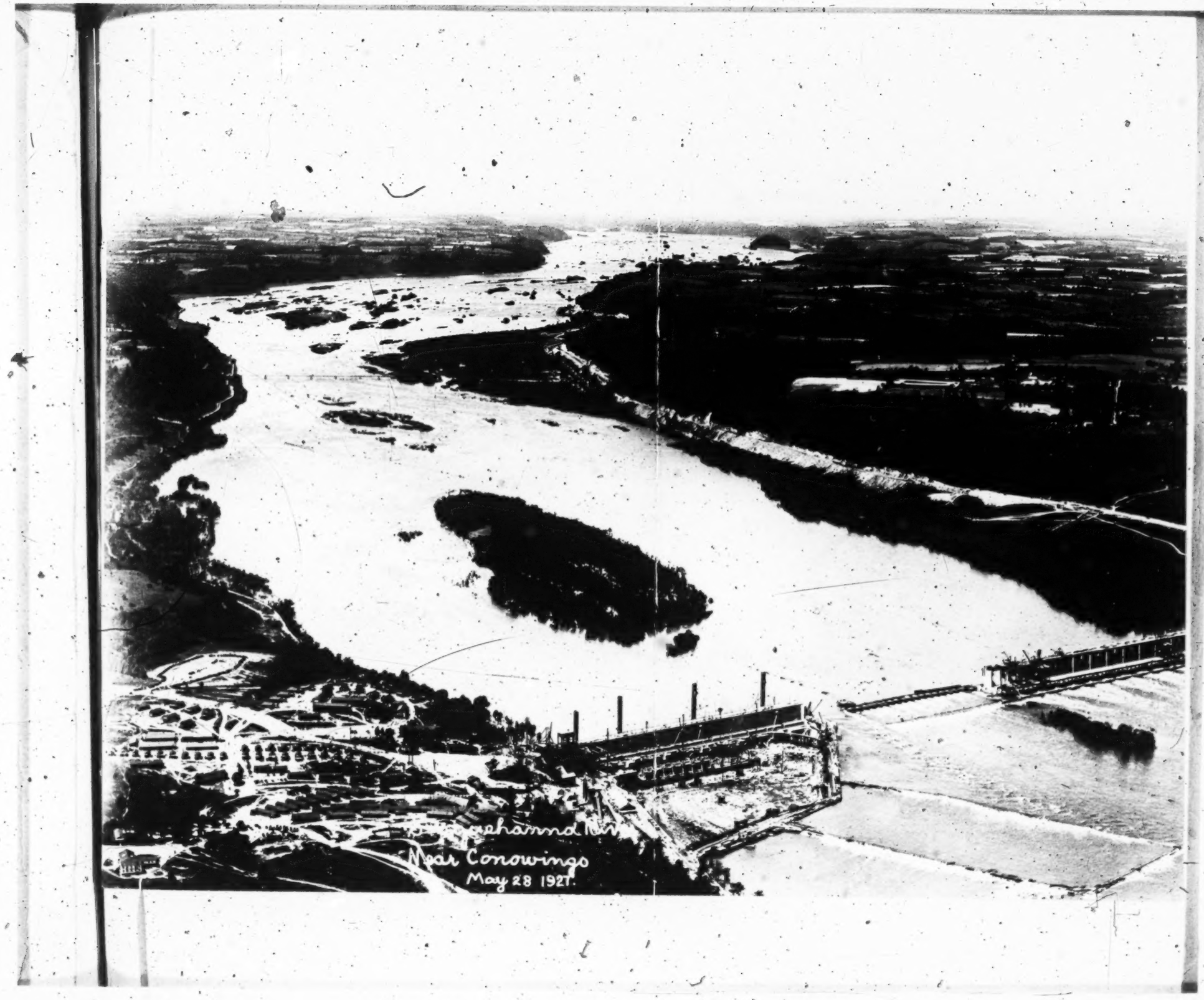
Near Conowingo
May 28 1927.

Susquehanna River
Near Conowingo
Sept. 5- 1927

Susquehanna River
"Conowingo" Project No. 405
July 30 1928

APPENDIX.

FOURTEENTH AMENDMENT OF FEDERAL CONSTITUTION.

Section 1 of Article XIV of the Amendments of the Federal Constitution:—

"SECTION 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

COMMERCE CLAUSE OF FEDERAL CONSTITUTION.

Article I, Section 8 of the Constitution of the United States:—

"SECTION 8. The Congress shall have Power * * *;

"To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes."

U. S. C. A., TITLE 28, SECTION 344, SUB-SECTION (a).

"SUB-SECTION (a)—A final judgment or decree in any suit in the highest court of a State in which a decision in the suit could be had, where is drawn in question the validity of a treaty or statute of the United States, and the decision is against its validity; or where is drawn, in question the validity of a statute

of any State, on the ground of its being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity, may be reviewed by the Supreme Court upon a writ of error."

ACT OF THE GENERAL ASSEMBLY OF MARYLAND 1908, CHAPTER 268, SECTION 5 (A PART OF APPELLANT'S "1908 CHARTER").

"SEC. 5. And be it further enacted, That in consideration of the construction by the said Susquehanna Power Company, its successors or assigns of a dam or dams in, along or across the said river and its shares and the canals, railroads, ferries or highways thereon, thereabout or leading thereto, and backing the waters of said river, thereby either singly or in series to the elevation to which said dam or dams may be erected, and either with or without the aid of the canals hereinafter mentioned, said Susquehanna Power Company, its successors and assigns be and it is hereby declared to be also a slack water navigation company with all the powers and authorities of the charters of the Tidewater Canal Company and the proprietors of the Susquehanna Canal to the end that *in aid of the powers of Congress* it may create a safe and practicable navigation up and down said river, either upon the bed thereof, by means of said back water or otherwise, or by means of a canal or canals along the margin thereof, or by means of such methods conjointly, either above or below said dam or dams, to the end that real navigation of said river above tidewater in Maryland heretofore so often unsuccessfully attempted, may now be established, and in addition to its present powers, the said Susquehanna Power Company, its successors and assigns, is hereby vested with the following exclusive powers, liberties, privileges, benefits, franchises and immunities, that is to say:

"(*a*) To cut, re-cut or enlarge canals along the shores of said river, with dimensions commensurate with the beam, displacement tonnage and motive power of all vessels which shall navigate the back water formed by its said dam or dams, and erect, equip and maintain all dams, feeders, acqueducts, locks, wharves and basins, and such other appurtenances and accessories thereto as may be necessary, and in order to acquire the necessary property for each of the objects aforesaid, shall have all the powers of section 3 herein as well as such powers contained in said charters of the proprietors of the Susquehanna Canal and Tidewater Canal Company as are duly applicable to such acquisition without limit to the quantity of land to be condemned except the necessity of said corporation as by it determined.

"(*b*) To acquire own and hold by purchase or otherwise the stock, franchises, property or assets of, or exchange stock with, merge with or consolidate with the said Tidewater Canal Company or the proprietors of the Susquehanna Canal or the 'Susquehanna Canal and Power Company' a corporation of Pennsylvania or of any other corporation or association, whatsoever or wheresoever, and also to assume pay or guarantee any indebtedness or contracts of any other corporation or association on such terms or conditions as may be mutually agreed upon.

"(*c*) To charge and collect tolls for the navigation of the bed of said river above its dam or dams or of the tail races thereof, not exceeding the rate of two cents per ton per mile, as a remuneration to said corporation for the improvements aforesaid."

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Supreme Court of the United States.

OCTOBER TERM, 1930. No. 368.

The Susquehanna Power Company, Appellant,

v.

State Tax Commission of Maryland.

APPEAL FROM THE COURT OF APPEALS OF THE STATE OF MARYLAND.

APPELLANT'S REPLY TO APPELLEE'S MOTION TO DISMISS OR AFFIRM.

The Appellant filed its appeal from the Court of Appeals of the State of Maryland, and pursuant to Rule 12 of this Court filed its Statement as to Jurisdiction on Appeal, to which no answer was filed by the Appellee, and this Court noted probable jurisdiction, and the Appellant filed its Brief on the merits and proceeded to argument.

Subsequent to the filing of the Brief of the Appellant on the merits, the Appellee filed a Motion to Dismiss or Affirm and Brief in support thereof March 16, 1931), to which this is an answer pursuant to the rules of this Court requiring the same, within twenty days after the said motion was filed.

The Appellee in its Brief in support of the Motion to Dismiss for want of jurisdiction states (p. 6):—

> "Except for the claim of immunity as a federal instrumentality, the claims asserted in the assignments of error were not presented to or passed upon by the lower court."

The Appellant has raised several questions, the one referred to being stated as follows:—

> 1. That the statute of the State of Maryland, as interpreted by the state Court of Appeals, providing for a tax upon all of the real property of the Appellant, a corporation of the State of Maryland, is invalid to the extent that it authorizes a tax to be levied upon the submerged lands constituting the bed of the Susquehanna River, which at the time of the assessment of the tax complained of was adopted by the United States of America as an instrumentality for navigation.

This question is raised by the requests for rulings before the State Tax Commission of Maryland, Nos. 7 (Record, p. 314) and 9 (Record, p. 315). They were before the Circuit Court of Harford County and before the Court of Appeals of the State of Maryland, and the claim of invalidity as to the tax so assessed under the authority created by the said statute was denied by both courts, the Circuit Court of Harford County disposing of the question adversely to the Appellant without an opinion, and the Court of Appeals disposing of the question in so much of its opinion as appears on pages 330 to 337 of the Record.

Appellant refers this Court to its Statement as to Jurisdiction on Appeal heretofore filed (pp. 8 to 12, inc.) and to Appellant's Brief on the merits (pp. 30 to 41, inc.). Also see *Fiske* v. *Kansas*, 274 U. S. 380, and the cases there cited.

The other points made in the Brief for the Appellee (p. 6) are as follows:—

> "III. The claim that the assessment is invalid in that it includes values attributable to the waters of the Susquehanna River and to a federal license, and the claim that the assessment is invalid for inequality are each equally unsubstantial.
>
> "IV. The claim of the Appellant to immunity from taxation as a federal agency is wholly unsubstantial."

The reasons for Appellant's claim to such exemption are found in its request for rulings No. 5 (R. p. 313) No. 7 (R. p. 314) and No. 9 (R. p. 315). Request No. 5 was disposed of by the State Tax Commission as follows (Rec. p. 316):—

> "5. Neither the Federal license nor the State franchise is the subject of assessment by the County Commissioners or State Tax Commission. So far, however, as the prayer may be held to assume that the property of the Power Company must be assessed at such value as it would have if there were no license or permission of the Federal or State governments to use and operate the same as a power plant, the prayer is refused."

Requests No. 7 and No. 9 were refused completely (R. 316). In disposing of these questions raised in both Courts, the Circuit Court of Harford County, without an opinion, denied the claim of invalidity of the taxing power by affirming the assessment of the State Tax Commission, and the learned Court of Appeals disposed of them adversely to the claim of the Appellant as follows (R. pp. 336, 341, 344):—

> "That contention rests upon two fallacies, one, that the submerged land cannot be treated as property separate and apart from the water which flows over it, the other that the land and water together constitute a 'highway' and as such cannot be taxed." (Rec. p. 336.)
>
> * * * * * * *
>
> "The real value of these lands lies in the fact that they form a natural basin through which a large river flows and within a few miles falls nearly one hundred feet, and that by the erection of a dam across the only outlet from that basin, the waters of that river may be impounded so as to generate nearly six hundred thousand horse power. To say that its utility for that

purpose adds nothing to the value of the land, or, what in effect is the same thing to say that the value created by that utility cannot be taxed because such a tax would be imposed upon flowing water simply ignores the facts." (Rec. p. 341.)

* * * * * * *

"Assuming that neither the license nor the franchises may be taxed, the value they gave to appellant's project by permitting it to operate is taxable." (Rec. p. 344.)

The basis for the claim of immunity asserted by the Appellant against the power exercised by the State Tax Commission pursuant to the statute of the State of Maryland which, as interpreted by the Court of Appeals is claimed by the Appellant to be invalid, is set forth not only in the Statement as to Jurisdiction heretofore filed, but in Appellant's Brief on the merits (pp. 41 to 49, inclusive).

The Appellant asserts that the decisions of this Court clearly show the lack of power in the states, through the taxing authority thereof, to burden the exercise of a Federal franchise.

The learned counsel for the Appellee suggests a distinction between the asserted right of protection for the Federal franchise exercised by the Appellant and the protection against state taxation granted by the decisions of this Court to the patentee under a grant of a Federal patent, because of the propriety in granting to the latter an inducement to continue his inventive genius and to encourage others to become inventors.

This raises the thought that unless the exemption is granted to the holders of Federal licenses for hydro electric projects in the navigable waters of the United States from the excessive burdens imposed by state taxation on those lands devoted by the project in relief of the United States for expenses of improvements for navigation there is the probability that discouragement to such developments will ensue and the purpose of the Act defeated.

No exemption is claimed here for the tangible real or

personal property devoted to the commercial project made possible by the waters impounded for the improvement of navigation. Immunity is claimed solely for the lands forming the natural basin of the navigable waters and dedicated to navigation, whether such waters are used or not used to create electrical energy.

The extent to which the exercise of the state power of taxation may become not only a discouragement but establish for the taxing authorities the status of a "wrecking crew" is shown by the facts appearing in the record of this case.

It is held by the Court of Appeals of Maryland that there is no standard for comparison of the "submerged lands" of the Appellant with other lands in the State of Maryland, and it is fair to assume that similar situations exist in other states. The learned Court of Appeals of Maryland therefore holds that in the exercise of the power granted under the state statute the State Tax Commission is free to fix a valuation for such lands as to it may seem right and proper.

The valuation desired cannot be found apparently in the lands, as lands, but, as conceded by the state authorities, by the learned Court of Appeals and by counsel for the Appellee in the Brief filed in support of the Motion and in Reply on the merits, such desired value is only available by adding to the value as lands a value attributable solely to the Federal license.

The language of the Court of Appeals expresses the foundation for Appellant's claim to a right of review by this Court in the clearest possible language (Record, p. 344):—

> "Manifestly if the appellant were not permitted to operate its project, much of its property devoted to its purposes, would have a mere junk value, and the fact that it can operate is what gives its property its greatest earning power and utility. And as its value largely depends upon those elements, the effect of the license and franchises cannot be ighored."

This reasoning may apply with force to the power plant and facilities for generating electrical energy, but has no application to the lands in the bed of the River. These lands have been devoted effectively to improving navigation, whether the waters which continue to flow over them are used to produce power or not.

The State statute as interpreted by the State Court is held valid as authority to levy the tax complained of. This Court has jurisdiction to review and to reach a contrary conclusion.

Fiske v. *Kansas (supra);*
First National Bank v. *Anderson,* 269 U. S. 341.

The decision of the State Court (complained of by Assignments of Error III and IV, Rec. pp. 322, 323) that the power to tax the lands of a Federal licensee devoted to navigation is a valid exercise of power by the State under the authority of the State statute, is but one reason for the review of that decision by this Court. Another and equally important reason why this decision should be reviewed, because of its general application to all Federal licenses under the Federal Water Power Act, appears in the opinion of the learned Court of Appeals where it is held that, as stated by the Appellee, the Federal statute does not authorize the creation of a project in aid of navigation under the Commerce Clause of the Federal Constitution, but merely creates a commercial enterprise for the profit of the Licensee. This interpretation by the State Court, in effect, is a declaration that the Federal Water Power Act (Appendix hereto, pages 17 to 46) is unconstitutional and invalid, and an affirmance of the judgment of the Court below by this Court would be so interpreted.

The language of the Court of Appeals to the effect stated is as follows (Rec. pp. 331-332):—

> "The mere fact that the impounding of water by its dam may to some extent facilitate navigation for a short distance, is incidental and secondary to its primary purpose of manufacturing and selling electric

energy for profit, and it is not required to do any act or thing in aid of the Federal government except that it is permitted or licensed to complete a project for its own profit which incidentally may effect beneficially or otherwise the navigability of the river. But it is contended that the United States has a 'power coupled with an interest' in the project. Just what is meant by that expression or how it affects the question under consideration is not apparent. That the Federal government has an interest in the project and that it may exercise certain powers in respect to its operation and maintenance in aid of navigation cannot well be denied. For 'whenever' the United States desires to install navigation facilities, the licensee is required to grant to it such of its lands and rights of way and permit such control of its pools as may be required for that purpose, and as already stated the United States may upon the expiration of the term of the license take over the project upon the payment of just compensation therefor. It has therefore in a sense an interest in the project, and certain optional powers in respect to its control and operation. But such powers and interest are nothing more than a consideration for the license, and do not in themselves constitute the licensee a federal agency. The interest is essentially reversionary, and the powers, except such as refer to service and rates are for the most part contingent upon an event which may never occur, to wit, the installation of navigation facilities by the Federal government. The principal and controlling facts are that the licensee desired to establish on the Susquehanna river a power project to make money for its stockholders, that to accomplish that purpose it required a Federal license, and that the Federal government in consideration for that license exacted of the licensee certain concessions which may be valuable or meaningless accordingly as they may be affected by conditions which cannot now be predicted."

It must be conceded, however, that unless the Susquehanna River is a navigable stream under the Federal Rule (found as a fact and so referred to by the Federal Power Commission in License, Rec. pp. 288-311), and unless there is a present improvement in its navigation by the exercise of the powers granted to the licensee, asserted by the statute and the Federal Power Commission to be the purpose for granting the same, the license is invalid and the statute of Congress authorizing its grant is unconstitutional.

Alabama Power Co. v. *Gulf Power Co.*, 283 Fed. Rep. 606;
New Jersey v. *Sargent*, 269 U. S. 328.

It would seem that for this reason, also, this case is properly before this Court on appeal. If, however, the Court should conclude that the Court of Appeals of Maryland has not interpreted the Act of Congress in a manner that results in a declaration of its invalidity, but has merely denied an immunity claimed under it and the Fourteenth Amendment, then this Court is requested to consider the papers on appeal as though constituting a petition for writ of certiorari, and take jurisdiction under Paragraphs (b) and (c) of Section 344, Title 28, U. S. C. A.

Longest v. *Langford*, 274 U. S. 499;
Roche v. *McDonald*, 275 U. S. 449.

The Appellee asserts (Brief, p. 6) that "the claim that the assessment is invalid for inequality" is unsubstantial.

The Appellant concedes that there is no basis for this claim of inequality, if this Court approves of the finding of the Court below (Rec. p. 339) that as to the lands of the Appellant, *as lands*,

> "because of the unique character of the project there was no other property within the State which was like it, which could be used as a standard to measure its value."

The Appellant is confident that this Court will not so find because that conclusion ignores the identity of the taxable

unit, which is land, as land, and not the values added to it which are attributable to the pool in Pennsylvania, the waters of the Susquehanna River, and the right to use the latter granted by the Federal License.

Road Dist. v. *Missouri Pac. R. R. Co.*, 274 U. S. 188.

Mr. Justice Van Devanter (p. 192):—

> "The assessment to the railroad is not based on real property alone, but also on rolling stock and other personalty valued at $52,465.00, while all other assessments are confined to real property. In this there is an obvious and unreasonable discrimination."

and on p. 194:—

> "Our conclusion is that the assessment against the railroad is unreasonably discriminatory in so far as it is based on personal property, and in this respect violates the equal protection clause of the Fourteenth Amendment, and that it is otherwise so excessive as to be a manifestly arbitrary exaction and in violation of the due process of law clause of the same amendment."

See also *Standard Pipe Line* v. *Highway Dist.*, 277 U. S. 160.

The variance from the true base for taxation to an unlawful one, created to sustain the valuation imposed arbitrarily by the State Tax Commission, appears so well in the statement of the Court of Appeals that no re-statement need be made by this Appellant to show the ground of complaint (Record, pp. 338-339 and pp. 343-344):—

> "In assessing appellant's property therefore the Commission was bound to ascertain and declare its actual fair value and to assess it accordingly, but in approaching that problem it was confronted by certain difficulties inherent in the nature of the undertaking. First, there was the absence of any general market

for property of that character, because the value of the submerged lands depended so largely upon the contingency that capital could be secured to install the expensive and extensive equipment necessary to develop their latent possibilities, that lands could not well be sold at their real value unless sold as a part of or as ancillary to an entire project which included the structures and machinery needed to realize their highest utility. Again because of the unique character of the project there was no other property within the state which was like it, which could be used as a standard to measure its value.

"Obviously the simplest and the most convenient method of valuing appellant's property would have been to value the project as an entire thing. But the Commission was prevented from adopting that method both by the statutory law of the State and by the fact that a part of the property used in connection with and as a part of the project lay in another state. It was therefore compelled to separate the project into its component parts and to value such parts separately. And while that method was more difficult and more inconvenient than valuing the project as a whole, it involved no injustice or unfairness to the taxpayer because after all the value of the whole was but the sum of the values of its parts, considered as parts of the whole. Nor does appellant object that the Commission valued its submerged lands as a separate item, but because, it contends, its valuation was excessive, and that it was excessive because it included elements which were not incidental to or a part of the land as land, and because in arriving at its conclusion the Commission was affected by considerations which properly had no relation to the value of the land, and excluded from its consideration facts and circumstances which should have had a vital and controlling influence on its action" (Rec. pp. 338-339).

* * * * * * *

"Appellant's fifth prayer states that neither its Federal license nor its Maryland franchises may be taxed, and then adds 'neither is any method of valuation or assesment proper which includes in or adds to the valuation of such real estate as may be properly the subject of such assessment, the value of such franchises or either of them, or the capitalization of any income derived from the exercise of such franchises.' The Commission after conceding that neither the license nor the franchises could be taxed, refused that instruction in so far as it 'may be held to assume that the property of the Power Company must be assessed at such value as it would have if there were no license or permission of the Federal or State governments to use and operate the same as a power plant, the prayer is refused.' No objection to that ruling was specially pressed in this court and we have been able to discover none. Assuming that neither the license nor the franchises may be taxed, the value they gave to appellant's project by permitting it to operate is taxable. Manifestly if the appellant were not permitted to operate its project, much of its property devoted to its purposes, would have a mere junk value, and the fact that it can operate is what gives its property its greatest earning power and utility. And as its value largely depends upon those elements, the effect of the license and franchises can not be ignored" (Rec. pp. 343-344).

The Record clearly shows that there were so-called "rocky hill sides" assessed at ten dollars per acre, which have the same potential value as the Appellant's submerged lands, to hold the waters of the Susquehanna River, if and when the United States shall decide to raise the height of the Conowingo Dam, and that the lands in the bed of the river below the Dam have the same potential value, realizable if the United States shall erect another dam between the Conowingo Dam and tidewater.

These lands described as "rocky hillsides" or "woodland"

concededly have been taxed to others in the county at not in excess of $10 to $20 per acre, and to this Appellant at $20 per acre. It is conceded that prior to the flooding of the 2,110 acres, which are the subject of the assessment complained of, these lands, flooded or otherwise, carried an assessment for the year 1928 and prior thereto not in excess of $10 per acre. The increase of 10,000% in the assessment by the State Tax Commission, to $1113 per acre, was as of January 1, 1929. The fact that, as the record shows, the County Commissioners of Harford County in the exercise of the duty imposed upon them by law determined a valuation for these submerged lands of more than $3000 per acre (see Opinion of Court of Appeals, Record, p. 326), is fair evidence of the fact that if there is to be no basis for comparison between these and other lands in the taxing district, the assessed value will be the guess of those taxing authorities most greatly impressed by the needs of the State at the moment. The County Commissioners guessed $3,137 per acre for "submerged lands," and, together with other items, arrived at a total assessment of all of the tangible real property of Appellant in Harford County of $18,882,653 (Record, p. 326). The State Tax Commission reduced the Harford County assessment to $12,023,633 (Record, pp. 316-317; 327), guessing a value, *inter alia*, of $1113 per acre for the "submerged lands." The total of the difference is approximately $6,000,000. This sum, however, by the exercise of a further power in the State Tax Commission, approved by the Court of Appeals of Maryland, was simultaneously replaced by the assessed value imposed upon the capital stock of the Appellant in the sum of $6,000,000. (See Susquehanna Power Co. *v.* State Tax Commission, Case No. 369, p. 13), thereby preserving to Harford County its full expectations.

Counsel for the Appellee concede (Appellee's Brief on Motion to Dismiss, p. 17) that there is a Federal question if there is proof of an intentional inequality of assessment. The facts upon the record of this case show such inequality when it is remembered the tax is to be levied upon land as

land and not upon any other property rights of the owner thereof.

That the assessment of over $3000 per acre by the County Commissioners was arrived at on a basis that produced inequality is shown by the testimony of the experts (Messrs. Gregory and Fuller, Record, pp. 178, 193, 194, 205) to the effect that the total cost of the Project was taken by them and an allocation made to the structures and the tangible real property above water, including rocky hillsides, at the total cost thereof, and that the aggregate of these items of cost was deducted from the total cost of the "Project" in Harford County and the balance allocated to the *submerged portion of the land in the reservoir*, including in such cost so allocated to "submerged land" the cost of relocation of the Columbia & Port Deposit Railroad in Maryland, cost of relocating roads, telephone and telegraph lines, a portion of interest during construction, engineering and other intangibles.

There was no additional testimony offered to the State Tax Commission from which the value fixed by them of $1113 per acre could be arrived at, and the inference is unavoidable that it was an arbitrary cutting of the value of $3,137 fixed by the County Commissioners, in the face of the positive testimony to show that other *un*submerged lands of similar character as land owned by others carried an assessed value of $10 per acre.

The Appellant suggests that the record facts show "intentional" inequality of assessment. The Appellant fears, with apparent cause, that this intention will become systematic and habitual, and at an annual rate of increase equal to the initial rate of increase of 10,000%. If the power is recognized to exist by the affirmance of the learned Court below the exercise of the power would appear to be unlimited.

The State Court having found that federal questions were made before it, according to its practice, and having determined them, this Court will regard these questions as duly made for its consideration.

This Court has always recognized the difficulty of satis-

factorily defining the term "due process of law" in general terms applicable to all cases, and the desirability of judicial determination in each case as the question arises.

Miedreich v. *Lauenstein*, 232 U. S. 236;
Saltonstall v. *Saltonstall*, 276 U. S. 260;
Home Ins. Co. v. *Dick*, 281 U. S. 397.

The Appellant refers to the following decisions of this Court to show that substantial Federal questions raised by the conclusions of the Court below are clearly within the jurisdiction of this Court for its consideration:—

First National Bank v. *Anderson*, 269 U. S. 341.

Mr. Justice Van Devanter (p. 354):—

"We conclude that the state law, when construed and applied as authorizing the discrimination against the bank's shares which is charged in the petition, is in that regard in conflict with the restriction in the federal statute."

Kansas City Southern Ry. Co., v. *Road Improvement District &c.*, 256 U. S. 658.

Mr. Justice McReynolds (p. 661):—

"Obviously, the railroad companies have not been treated like individual owners, and we think the discrimination so palpable and arbitrary as to amount to a denial of the equal protection of the law. Benefits from local improvements must be estimated upon contiguous property according to some standard which will probably produce approximately correct general results. To say that 9.7 miles of railroad in a purely farming section, treated as an aliquot part of the whole system, will receive benefits amounting to $67,900.00 from the construction of 11.2 miles of gravel road seems wholly improbable, if not impossible. Classification, of course, is permissible, but we can find no adequate reason for what has been attempted in the present case. Royster Guano Co. *v.* Virginia, 253

U. S. 412, 415. It is doubtful whether any very substantial appreciation in value of the railroad property within the district will result from the improvements; and very clearly it cannot be taxed upon some fanciful view of future earnings and distributed values, while all other property is assessed solely according to area and position. Railroad property may not be burdened for local improvements upon a basis so wholly different from that used for ascertaining the contribution demanded of individual owners as necessarily to produce manifest inequality. Equal protection of the law must be extended to all."

The learned Court of Appeals has, in general, sustained the findings of the State Tax Commission by affirming its rejection of points of law presented to it, and by holding that as to the points of law affirmed by it there is nothing on the record to show that the Commission did not follow the law as it charged itself to do.

The Appellant assumes that, when such conclusions are properly challenged, this Court will go behind the reasons of the State Court to ascertain whether or not there is foundation for them.

Nor. Pac. Ry. v. *North Dakota*, 236 U. S. 585;
Kansas City So. Ry. v. *Commission*, 223 U. S. 573;
Creswill v. *Knights of Pythias*, 225 U. S. 246, 261.

The Appellant asserts with confidence that the Federal questions are properly before this Court and that they not only are substantial but of vital interest to this Appellant, and to many others, including the United States as licensor of many licensees under the Federal Water Power Act.

Respectfully submitted,

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APPENDIX.

THE FEDERAL WATER POWER ACT.

Approved June 10, 1920.

[PUBLIC—No. 280—66TH CONGRESS.]

(41 Statutes at Large p. 1063.)

An Act To create a Federal Power Commission; to provide for the improvement of navigation; the development of water power; the use of the public lands in relation thereto, and to repeal section 18 of the River and Harbor Appropriation Act, approved August 8, 1917, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That a commission is hereby created and established, to be known as the Federal Power Commission (hereinafter referred to as the commission), which shall be composed of the Secretary of War, the Secretary of the Interior, and the Secretary of Agriculture. Two members of the commission shall constitute a quorum for the transaction of business, and the commission shall have an official seal, which shall be judicially noticed. The President shall designate the chairman of the commission.

SEC. 2. That the commission shall appoint an executive secretary, who shall receive a salary of $5,000 a year, and prescribe his duties, and the commission may request the President of the United States to detail an officer from the United States Engineer Corps to serve the commission as engineer officer, his duties to be prescribed by the commission.

The work of the commission shall be performed by and through the Departments of War, Interior, and Agriculture and their engineering, technical, clerical, and other personnel except as may be otherwise provided by law.

All the expenses of the commission, including rent in the District of Columbia, all necessary expenses for transportation and subsistence, including, in the discretion of the com-

mission, a per diem of not exceeding $4 in lieu of subsistence incurred by its employees under its orders in making any investigation, or conducting field work, or upon official business outside of the District of Columbia and away from their designated points of duty, shall be allowed and paid on the presentation of itemized vouchers therefor approved by a member or officer of the commission duly authorized for that purpose; and in order to defray the expenses made necessary by the provisions of this Act there is hereby authorized to be appropriated such sums as Congress may hereafter determine, and the sum of $100,000 is hereby appropriated, out of any moneys in the Treasury not otherwise appropriated, available until expended, to be paid out upon warrants drawn on the Secretary of the Treasury upon order of the commission.

SEC. 3. That the words defined in this section shall have the following meanings for the purposes of this Act, to wit:

"Public lands" means such lands and interest in lands owned by the United States as are subject to private appropriation and disposal under public-land laws. It shall not include "reservations," as hereinafter defined.

"Reservations" means national monuments, national parks, national forests, tribal lands embraced within Indian reservations, military reservations, and other lands and interests in lands owned by the United States, and withdrawn, reserved, or withheld from private appropriation and disposal under the public-land laws; also lands and interests in lands acquired and held for any public purpose.

"Corporation" means a corporation organized under the laws of any State or of the United States empowered to develop, transmit, distribute, sell, lease, or utilize power in addition to such other powers as it may possess, and authorized to transact in the State or States in which its project is located all business necessary to effect the purposes of a license under this Act. It shall not include "municipalities" as hereinafter defined.

"State" means a State admitted to the Union, the District

of Columbia, and any organized Territory of the United States.

"Municipality" means a city, county, irrigation district, drainage district, or other political subdivision or agency of a State competent under the laws thereof to carry on the business of developing, transmitting, utilizing, or distributing power.

"Navigable waters" means those parts of streams or other bodies of water over which Congress has jurisdiction under its authority to regulate commerce with foreign nations and among the several States, and which either in their natural or improved condition, notwithstanding interruptions between the navigable parts of such streams or waters by falls, shallows, or rapids compelling land carriage, are used or suitable for use for the transportation of persons or property in interstate or foreign commerce, including therein all such interrupting falls, shallows, or rapids; together with such other parts of streams as shall have been authorized by Congress for improvement by the United States or shall have been recommended to Congress for such improvement after investigation under its authority.

"Municipal purposes" means and includes all purposes within municipal powers as defined by the constitution or laws of the State or by the charter of the municipality.

"Government dam" means a dam or other work, constructed or owned by the United States for Government purposes, with or without contribution from others.

"Project" means complete unit of improvement or development, consisting of a power house, all water conduits, all dams and appurtenant works and structures (including navigation structures) which are a part of said unit, and all storage, diverting, or forebay reservoirs directly connected therewith, the primary line or lines transmitting power therefrom to the point of junction with the distribution system or with the interconnected primary transmission system, all miscellaneous structures used and useful in connection with said unit or any part thereof, and all water rights, rights

of way, ditches, dams, reservoirs, lands, or interest in lands, the use and occupancy of which are necessary or appropriate in the maintenance and operation of such unit.

"Project works" means the physical structures of a project.

"Net investment" in a project means the actual legitimate original cost thereof as defined and interpreted in the "classification of investment in road and equipment of steam roads, issue of 1914, Interstate Commerce Commission," plus similar costs of additions thereto and betterments thereof, minus the sum of the following items properly allocated thereto, if and to the extent that such items have been accumulated during the period of the license from earnings in excess of a fair return on such investment: (a) Unappropriated surplus, (b) aggregate credit balances of current depreciation accounts, and (c) aggregate appropriations of surplus or income held in amortization, sinking fund, or similar reserves, or expended for additions or betterments or used for the purposes for which such reserves were created. The term "cost" shall include, in so far as applicable, the elements thereof prescribed in said classification, but shall not include expenditures from funds obtained through donations by States, municipalities, individuals, or others, and said classification of investment of the Interstate Commerce Commission shall in so far as applicable be published and promulgated as a part of the rules and regulations of the commission.

SEC. 4. That the commission is hereby authorized and empowered—

(a) To make investigations and to collect and record data concerning the utilization of the water resources of any region to be developed, the water power industry and its relation to other industries and to interstate or foreign commerce, and concerning the location, capacity, development costs, and relation to markets of power sites, and whether the power from Government dams can be advantageously used by the United States for its public purposes, and what is a fair value of such power, to the extent the commission may deem necessary or useful for the purposes of this Act.

In order to aid the commission in determining the net investment of a licensee in any project, the licensee shall, upon oath, within a reasonable period of time, to be fixed by the commission, after the construction of the original project or any addition thereto or betterment thereof, file with the commission, in such detail as the commission may require, a statement in duplicate showing the actual legitimate cost of construction of such project, addition, or betterment, and the price paid for water rights, rights of way, lands, or interest in lands. The commission shall deposit one of said statements with the Secretary of the Treasury. The licensee shall grant to the commission or to its duly authorized agent or agents, at all reasonable times, free access to such project, addition, or betterment, and to all maps, profiles, contracts, reports of engineers, accounts, books, records, and all other papers and documents relating thereto.

(b) To cooperate with the executive departments and other agencies of State or National Governments in such investigations; and for such purpose the several departments and agencies of the National Government are authorized and directed upon the request of the commission, to furnish such records, papers, and information in their possession as may be requested by the commission, and temporarily to detail to the commission such officers or experts as may be necessary in such investigations.

(c) To make public from time to time the information secured hereunder, and to provide for the publication of its reports and investigations in such form and manner as may be best adapted for public information and use. The commission, on or before the first Monday in December of each year, shall submit to Congress for the fiscal year preceding a classified report showing the permits and licenses issued under this Act, and in each case the parties thereto, the terms prescribed, and the moneys received, if any, on account thereof.

(d) To issue licenses to citizens of the United States, or to any association of such citizens, or to any corporation

organized under the laws of the United States or any State thereof, or to any State, or municipality for the purpose of constructing, operating, and maintaining dams, water conduits, reservoirs, power houses, transmission lines, or other project works necessary or convenient for the development and improvement of navigation, and for the development, transmission, and utilization of power across, along, from or in any of the navigable waters of the United States, or upon any part of the public lands and reservations of the United States (including the Territories), or for the purpose of utilizing the surplus water or water power from any Government dam, except as herein provided: *Provided,* That licenses shall be issued within any reservation only after a finding by the commission that the license will not interfere or be inconsistent with the purpose for which such reservation was created or acquired, and shall be subject to and contain such conditions as the Secretary of the department under whose supervision such reservation falls shall deem necessary for the adequate protection and utilization of such reservation: *Provided further,* That no license affecting the navigable capacity of any navigable waters of the United States shall be issued until the plans of the dam or other structures affecting navigation have been approved by the Chief of Engineers and the Secretary of War. Whenever the contemplated improvement is, in the judgment of the commission, desirable and justified in the public interest for the purpose of improving or developing a waterway or waterways for the use or benefit of interstate or foreign commerce, a finding to that effect shall be made by the commission and shall become a part of the records of the commission: *Provided further,* That in case the commission shall find that any Government dam may be advantageously used by the United States for public purposes in addition to navigation, no license therefor shall be issued until two years after it shall have reported to congress the facts and conditions relating thereto, except that this provision shall not apply to any Government dam constructed prior to the passage of

this Act: *And provided further,* That upon the filing of any application for a license which has not been preceded by a preliminary permit under subsection (e) of this section, notice shall be given and published as required by the proviso of said subsection.

(e) To issue preliminary permits for the purpose of enabling applicants for a license hereunder to secure the data and to perform the acts required by section 9 hereof: *Provided, however,* That upon the filing of any application for a preliminary permit by any person, association, or corporation the commission, before granting such application shall at once give notice of such application in writing to any State or municipality likely to be interested in or affected by such application; and shall also publish notice of such application for eight weeks in a daily or weekly newspaper published in the county or counties in which the project or any part thereof or the lands affected thereby are situated.

(f) To prescribe rules and regulations for the establishment of a system of accounts and for the maintenance thereof by licensees hereunder; to examine all books and accounts of such licensees at any time; to require them to submit at such time or times as the commission may require statements and reports, including full information as to assets and liabilities, capitalization, net investment and reduction thereof, gross receipts, interest due and paid, depreciation and other reserves, cost of project, cost of maintenance and operation of the project, cost of renewals and replacements of the project works, and as to depreciation of the project works and as to production, transmission, use and sale of power; also to require any licensee to make adequate provision for currently determining said costs and other facts. All such statements and reports shall be made upon oath, unless otherwise specified, and in such form and on such blanks as the commission may require. Any person who, for the purpose of deceiving, makes or causes to be made any false entry in the books or the accounts of such licensee, and any person who, for the pur-

pose of deceiving, makes or causes to be made any false statement or report in response to a request or order or direction from the commission for the statements and report herein referred to shall, upon conviction, be fined not more than $2,000 or imprisoned not more than five years, or both.

(g) To hold hearings and to order testimony to be taken by deposition at any designated place in connection with the application for any permit or license, or the regulation of rates, service, or securities, or the making of any investigation, as provided in this Act; and to require by subpœna, signed by any member of the commission, the attendance and testimony of witnesses and the production of documentary evidence from any place in the United States, and in case of disobedience to a subpœna the commission may invoke the aid of any court of the United States in requiring the attendance and testimony of witnesses and the production of documentary evidence. Any member, expert, or examiner of the commission may, when duly designated by the commission for such purposes, administer oaths and affirmations, examine witnesses and receive evidence. Depositions may be taken before any person designated by the commission or by its executive secretary and empowered to administer oaths, shall be reduced to writing by such person or under his direction, and subscribed by the deponent. Witnesses summoned before the commission shall be paid the same fees and mileage that are paid witnesses in the courts of the United States, and witnesses whose depositions are taken and persons taking the same shall severally be entitled to the same fees as are paid for like services in the courts of the United States.

(h) To perform any and all acts, to make such rules and regulations, and to issue such orders not inconsistent with this Act as may be necessary and proper for the purpose of carrying out the provisions of this Act.

SEC. 5. That each preliminary permit issued under this Act shall be for the sole purpose of maintaining priority of application for a license under the terms of this Act

for such period or periods, not exceeding a total of three years, as in the discretion of the commission may be necessary for making examinations and surveys, for preparing maps, plans, specifications, and estimates, and for making financial arrangements. Each such permit shall set forth the conditions under which priority shall be maintained and a license issued. Such permits shall not be transferable, and may be canceled by order of the commission upon failure of permittees to comply with the conditions thereof.

SEC. 6. That licenses under this Act shall be issued for a period not exceeding fifty years. Each such license shall be conditioned upon acceptance by the licensee of all the terms and conditions of this Act and such further conditions, if any, as the commission shall prescribe in conformity with this Act, which said terms and conditions and the acceptance thereof shall be expressed in said license. Licenses may be revoked only for the reasons and in the manner prescribed under the provisions of this Act, and may be altered or surrendered only upon mutual agreement between the licensee and the commission after ninety days' public notice.

SEC. 7. That in issuing preliminary permits hereunder or licenses where no preliminary permit has been issued and in issuing licenses to new licensees under section 15 hereof the commission shall give preference to applications therefor by States and municipalities, provided the plans for the same are deemed by the commission equally well adapted, or shall within a reasonable time to be fixed by the commission be made equally well adapted, to conserve and utilize in the public interest the navigation and water resources of the region; and as between other applicants, the commission may give preference to the applicant the plans of which it finds and determines are best adapted to develop, conserve, and utilize in the public interest the navigation and water resources of the region, if it be satisfied as to the ability of the applicant to carry out such plans.

That whenever, in the judgment of the commission, the

development of any project should be undertaken by the United States itself, the commission shall not approve any application for such project by any citizen, association, corporation, State, or municipality, but shall cause to be made such examinations, surveys, reports, plans, and estimates of the cost of the project as it may deem necessary, and shall submit its findings to Congress with such recommendations as it may deem appropriate concerning the construction of such project or completion of any project upon any Government dam by the United States.

The commission is hereby authorized and directed to investigate and, on or before the 1st day of January, 1921, report to Congress the cost and, in detail, the economic value of the power plant outlined in project numbered 3, House Document numbered 1400, Sixty-second Congress, third session, in view of existing conditions, utilizing such study as may heretofore have been made by any department of the Government; also in connection with such project to submit plans and estimates of cost necessary to secure an increased and adequate water supply for the District of Columbia. For this purpose the sum of $25,000, or so much thereof as may be necessary, is hereby appropriated.

SEC. 8. That no voluntary transfer of any license, or of the rights thereunder granted, shall be made without the written approval of the commission; and any successor or assign of the rights of such licensee, whether by voluntary transfer, judicial sale, foreclosure sale, or otherwise, shall be subject to all the conditions of the license under which such rights are held by such licensee and also subject to all the provisions and conditions of this Act to the same extent as though such successor or assign were the original licensee hereunder: *Provided,* That a mortgage or trust deed or judicial sales made thereunder or under tax sales shall not be deemed voluntary transfers within the meaning of this section.

SEC. 9. That each applicant for a license hereunder shall submit to the commission—

(a) Such maps, plans, specifications, and estimates of cost as may be required for a full understanding of the proposed project. Such maps, plans, and specifications when approved by the commission shall be made a part of the license; and thereafter no change shall be made in said maps, plans, or specifications until such changes shall have been approved and made a part of such license by the commission.

(b) Satisfactory evidence that the applicant has complied with the requirements of the laws of the State or States within which the proposed project is to be located with respect to bed and banks and to the appropriation, diversion, and use of water for power purposes and with respect to the right to engage in the business of developing, transmitting, and distributing power, and in any other business necessary to effect the purposes of a license under this Act.

(c) Such additional information as the commission may require.

SEC. 10. That all licenses issued under this Act shall be on the following conditions:

(a) That the project adopted, including the maps, plans, and specifications, shall be such as in the judgment of the commission will be best adapted to a comprehensive scheme of improvement and utilization for the purposes of navigation, of water-power development, and of other beneficial public uses; and if necessary in order to secure such scheme the commission shall have authority to require the modification of any project and of the plans and specifications of the project works before approval.

(b) That except when emergency shall require for the protection of navigation, life, health, or property, no substantial alteration or addition not in conformity with the approved plans shall be made to any dam or other project works constructed hereunder of a capacity in excess of one hundred horsepower without the prior approval of the commission; and any emergency alteration or addition so made

shall thereafter be subject to such modification and change as the commission may direct.

(c) That the licensee shall maintain the project works in a condition of repair adequate for the purposes of navigation and for the efficient operation of said works in the development and transmission of power, shall make all necessary renewals and replacements, shall establish and maintain adequate depreciation reserves for such purposes, shall so maintain and operate said works as not to impair navigation, and shall conform to such rules and regulations as the commission may from time to time prescribe for the protection of life, health, and property. Each licensee hereunder shall be liable for all damages occasioned to the property of others by the construction, maintenance, or operation of the project works or of the works appurtenant or accessory thereto, constructed under the license, and in no event shall the United States be liable therefor.

(d) That after the first twenty years of operation out of surplus earned thereafter, if any, accumulated in excess of a specified reasonable rate of return upon the actual, legitimate investment of a licensee in any project or projects under license the licensee shall establish and maintain amortization reserves, which reserves shall, in the discretion of the commission, be held until the termination of the license or be applied from time to time in reduction of the net investment. Such specified rate of return and the proportion of such surplus earnings to be paid into and held in such reserves shall be set forth in the license.

(e) That the licensee shall pay to the United States reasonable annual charges in an amount to be fixed by the commission for the purpose of reimbursing the United States for the costs of the administration of this Act; for recompensing it for the use, occupancy, and enjoyment of its lands or other property; and for the expropriation to the Government of excessive profits until the respective States shall make provision for preventing excessive profits or for the expropriation thereof to themselves, or until the period of amortization as herein provided is reached,

and in fixing such charges the commission shall seek to avoid increasing the price to the consumers of power by such charges, and charges for the expropriation of excessive profits may be adjusted from time to time by the commission as conditions may require: *Provided,* That when licenses are issued involving the use of Government dams or other structures owned by the United States or tribal lands embraced within Indian reservations the commission shall fix a reasonable annual charge for the use thereof, and such charges may be readjusted at the end of twenty years after the beginning of operations and at periods of not less than ten years thereafter in a manner to be described in each license: *Provided,* That licenses for the development, transmission, or distribution of power by States or municipalities shall be issued and enjoyed without charge to the extent such power is sold to the public without profit or is used by such State or municipality for State or municipal purposes, except that as to projects constructed or to be constructed by States or municipalities primarily designed to provide or improve navigation licenses therefor shall be issued without charge; and that licenses for the development, transmission, or distribution of power for domestic, mining, or other beneficial use in projects of not more than one hundred horsepower capacity may be issued without charge, except on tribal lands within Indian reservations; but in no case shall a license be issued free of charge for the development and utilization of power created by any Government dam and that the amount charged therefor in any license shall be such as determined by the commission.

(f) That whenever any licensee hereunder is directly benefited by the construction work of another licensee, a permittee, or of the United States of a storage reservoir or other headwater improvement, the commission shall require as a condition of the license that the licensee so benefited shall reimburse the owner of such reservoir or other improvements for such part of the annual charges for interest, maintenance, and depreciation thereon as the

commission may deem equitable. The proportion of such charges to be paid by any licensee shall be determined by the commission.

Whenever such reservoir or other improvement is constructed by the United States the commission shall assess similar charges against any licensee directly benefited thereby, and any amount so assessed shall be paid into the Treasury of the United States, to be reserved and appropriated as a part of the special fund for headwater improvements as provided in section 17 hereof.

(g) Such other conditions not inconsistent with the provisions of this Act as the commission may require.

(h) That combinations, agreements, arrangements, or understandings, express or implied, to limit the output of electrical energy, to restrain trade, or to fix, maintain, or increase prices for electrical energy or service are hereby prohibited.

(i) In issuing licenses for a minor part only of a complete project, or for a complete project of not more than one hundred horsepower capacity, the commission may in its discretion waive such conditions, provisions, and requirements of this Act, except the license period of fifty years, as it may deem to be to the public interest to waive under the circumstances: *Provided,* That the provisions hereof shall not apply to lands within Indian reservations.

SEC. 11. That if the dam or other project works are to be constructed across, along, or in any of the navigable waters of the United States, the commission may, in so far as it deems the same reasonably necessary to promote the present and future needs of navigation and consistent with a reasonable investment cost to the licensee, include in the license any one or more of the following provisions or requirements:

(a) That such licensee shall, to the extent necessary to preserve and improve navigation facilities, construct, in whole or in part, without expense to the United States, in connection with such dam, a lock or locks, booms, sluices, or other structures for navigation purposes, in accordance

with plans and specifications approved by the Chief of Engineers and the Secretary of War and made part of such license.

(b) That in case such structures for navigation purposes are not made a part of the original construction at the expense of the licensee, then whenever the United States shall desire to complete such navigation facilities the licensee shall convey to the United States, free of cost, such of its land and its rights of way and such right of passage through its dams or other structures, and permit such control of pools as may be required to complete such navigation facilities.

(c) That such licensee shall furnish free of cost to the United States power for the operation of such navigation facilities, whether constructed by the licensee or by the United States.

SEC. 12. That whenever application is filed for a project hereunder involving navigable waters of the United States, and the commission shall find upon investigation that the needs of navigation require the construction of a lock or locks or other navigation structures, and that such structures can not, consistent with a reasonable investment cost to the applicant, be provided in the manner specified in section 11, subsection (a) hereof, the commission may grant the application with the provision to be expressed in the license that the licensee will install the necessary navigation structures if the Government fails to make provision therefor within a time to be fixed in the license and cause a report upon such project to be prepared, with estimates of cost of the power development and of the navigation structures, and shall submit such report to Congress with such recommendations as it deems appropriate concerning the participation of the United States in the cost of construction of such navigation structures.

SEC. 13. That the licensee shall commence the construction of the project works within the time fixed in the license, which shall not be more than two years from the date thereof, shall thereafter in good faith and with due dili-

gence prosecute such construction, and shall within the time fixed in the license complete and put into operation such part of the ultimate development as the commission shall deem necessary to supply the reasonable needs of the then available market, and shall from time to time thereafter construct such portion of the balance of such development as the commission may direct, so as to supply adequately the reasonable market demands until such development shall have been completed. The periods for the commencement of construction may be extended once but not longer than two additional years and the period for the completion of construction carried on in good faith and with reasonable diligence may be extended by the commission when not incompatible with the public interests. In case the licensee shall not commence actual construction of the project works, or of any specified part thereof, within the time prescribed in the license or as extended by the commission, then, after due notice given, the license shall, as to such project works or part thereof, be terminated upon written order of the commission. In case the construction of the project works, or of any specified part thereof, have been begun but not completed within the time prescribed in the license, or as extended by the commission, then the Attorney General, upon the request of the commission, shall institute proceedings in equity in the district court of the United States for the district in which any part of the project is situated for the revocation of said license, the sale of the works constructed, and such other equitable relief as the case may demand, as provided for in section 26 hereof.

SEC. 14. That upon not less than two years' notice in writing from the commission the United States shall have the right upon or after the expiration of any license to take over and thereafter to maintain and operate any project or projects as defined in section 3 hereof, and covered in whole or in part by the license, or the right to take over upon mutual agreement with the licensee all property owned and held by the licensee then valuable and serviceable in the

development, transmission, or distribution of power and which is then dependent for its usefulness upon the continuance of the license, together with any lock or locks or other aids to navigation constructed at the expense of the licensee, upon the condition that before taking possession it shall pay the net investment of the licensee in the project or projects taken, not to exceed the fair value of the property taken, plus such reasonable damages, if any, to property of the licensee valuable, serviceable, and dependent as above set forth but not taken, as may be caused by the severance therefrom of property taken, and shall assume all contracts entered into by the licensee with the approval of the commission. The net investment of the licensee in the project or projects so taken and the amount of such severance damages, if any, shall be determined by agreement between the commission and the licensee, and in case they can not agree, by proceedings in equity instituted by the United States in the district court of the United States in the district within which any such property may be located: *Provided,* That such net investment shall not include or be affected by the value of any lands, rights of way, or other property of the United States licensed by the commission under this Act, by the license, or by good will, going value, or prospective revenues: *Provided further,* That the values allowed for water rights, rights of way, lands, or interest in lands shall not be in excess of the actual reasonable cost thereof at the time of acquisition by the licensee: *Provided,* That the right of the United States or any State or municipality to take over, maintain, and operate any project licensed under this Act at any time by condemnation proceedings upon payment of just compensation is hereby expressly reserved.

SEC. 15. That if the United States does not, at the expiration of the original license, exercise its right to take over, maintain, and operate any project or projects of the licensee, as provided in section 14 hereof, the commission is authorized to issue a new license to the original licensee upon such terms and conditions as may be authorized or

required under the then existing laws and regulations, or to issue a new license under said terms and conditions to a new licensee, which license may cover any project or projects covered by the original license, and shall be issued on the condition that the new licensee shall, before taking possession of such project or projects, pay such amount, and assume such contracts as the United States is required to do, in the manner specified in section 14 hereof: *Provided*, That in the event the United States does not exercise the right to take over or does not issue a license to a new licensee, or issue a new license to the original licensee, upon reasonable terms, then the commission shall issue from year to year an annual license to the then licensee under the terms and conditions of the original license until the property is taken over or a new license is issued as aforesaid.

SEC. 16. That when in the opinion of the President of the United States, evidenced by a written order addressed to the holder of any license hereunder, the safety of the United States demands it, the United States shall have the right to enter upon and take possession of any project, or part thereof, constructed, maintained, or operated under said license, for the purpose of manufacturing nitrates, explosives, or munitions of war, or for any other purpose involving the safety of the United States, to retain possession, management, and control thereof for such length of time as may appear to the President to be necessary to accomplish said purposes, and then to restore possession and control to the party or parties entitled thereto; and in the event that the United States shall exercise such right it shall pay to the party or parties entitled thereto just and fair compensation for the use of said property as may be fixed by the commission upon the basis of a reasonable profit in time of peace, and the cost of restoring said property to as good condition as existed at the time of the taking over thereof, less the reasonable value of any improvements that may be made thereto by the United States and which are valuable and serviceable to the licensee.

SEC. 17. That all proceeds from any Indian reservation

shall be placed to the credit of the Indians of such reservation. All other charges arising from licenses hereunder shall be paid into the Treasury of the United States, subject to the following distribution: Twelve and one-half per centum thereof is hereby appropriated to be paid into the Treasury of the United States and credited to "Miscellaneous receipts"; 50 per centum of the charges arising from licenses hereunder for the occupancy and use of public lands, national monuments, national forests, and national parks shall be paid into, reserved, and appropriated as a part of the reclamation fund created by the Act of Congress known as the Reclamation Act, approved June 17, 1902; and 37½ per centum of the charges arising from licenses hereunder for the occupancy and use of national forests, national parks, public lands, and national monuments, from development within the boundaries of any State shall be paid by the Secretary of the Treasury to such State; and 50 per centum of the charges arising from all other licenses hereunder is hereby reserved and appropriated as a special fund in the Treasury to be expended under the direction of the Secretary of War in the maintenance and operation of dams and other navigation structures owned by the United States or in the construction, maintenance, or operation of headwater or other improvements of navigable waters of the United States.

SEC. 18. That the operation of any navigation facilities which may be constructed as a part of or in connection with any dam or diversion structure built under the provisions of this Act, whether at the expense of a licensee hereunder or of the United States, shall at all times be controlled by such reasonable rules and regulations in the interest of navigation, including the control of the level of the pool caused by such dam or diversion structure as may be made from time to time by the Secretary of War. Such rules and regulations may include the maintenance and operation by such licensee at its own expense of such lights and signals as may be directed by the Secretary of War, and such fishways as may be prescribed by the Sec-

retary of Commerce; and for willful failure to comply with any such rule or regulation such licensee shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished as provided in section 25 hereof.

SEC. 19. That as a condition of the license, every licensee hereunder which is a public-service corporation, or a person, association, or corporation owning or operating any project and developing, transmitting, or distributing power for sale or use in public service, shall abide by such reasonable regulation of the services to be rendered to customers or consumers of power, and of rates and charges of payment therefor, as may from time to time be prescribed by any duly constituted agency of the State in which the service is rendered or the rate charged. That in case of the development, transmission, or distribution, or use in public service of power by any licensee hereunder or by its customer engaged in public service within a State which has not authorized and empowered a commission or other agency or agencies within said State to regulate and control the services to be rendered by such licensee or by its customer engaged in public service, or the rates and charges of payment therefor, or the amount or character of securities to be issued by any of said parties, it is agreed as a condition of such license that jurisdiction is hereby conferred upon the commission, upon complaint of any person aggrieved or upon it own initiative, to exercise such regulation and control until such time as the State shall have provided a commission or other authority for such regulation and control: *Provided*, That the jurisdiction of the commission shall cease and determine as to each specific matter of regulation and control prescribed in this section as soon as the State shall have provided a commission or other authority for the regulation and control of that specific matter.

SEC. 20. That when said power or any part thereof shall enter into interstate or foreign commerce the rates charged and the service rendered by any such licensee, or by any subsidiary corporation, the stock of which is owned or

controlled directly or indirectly by such licensee, or by any person, corporation, or association purchasing power from such licensee for sale and distribution or use in public service shall be reasonable, nondiscriminatory, and just to the customer and all unreasonable discriminatory and unjust rates or services are hereby prohibited and declared to be unlawful; and whenever any of the States directly concerned has not provided a commission or other authority to enforce the requirements of this section within such State or to regulate and control the amount and character of securities to be issued by any of such parties or such States are unable to agree through their properly constituted authorities on the services to be rendered or on the rates or charges of payment therefor, or on the amount or character of securities to be issued by any of said parties, jurisdiction is hereby conferred upon the commission, upon complaint of any person aggrieved, upon the request of any State concerned, or upon its own initiative to enforce the provisions of this section, to regulate and control so much of the services rendered, and of the rates and charges of payment therefor as constitute interstate or foreign commerce and to regulate the issuance of securities by the parties included within this section, and securities issued by the licensee subject to such regulations shall be allowed only for the bona fide purpose of financing and conducting the business of such licensee.

The administration of the provisions of this section, so far as applicable, shall be according to the procedure and practice in fixing and regulating the rates, charges, and practices of railroad companies as provided in the Act to regulate commerce, approved February 4, 1887, as amended, and that the parties subject to such regulation shall have the same rights of hearing, defense, and review as said companies in such cases.

In any valuation of the property of any licensee hereunder for purposes of rate making, no value shall be claimed by the licensee or allowed by the commission for any project or projects under license in excess of the value or values

prescribed in section 14 hereof for the purposes of purchase by the United States, but there shall be included the cost to such licensee of the construction of the lock or locks or other aids of navigation and all other capital expenditures required by the United States, and no value shall be claimed or allowed for the rights granted by the commission or by this Act.

SEC. 21. That when any licensee can not acquire by contract or pledges an unimproved dam site or the right to use or damage the lands or property of others necessary to the construction, maintenance, or operation of any dam, reservoir, diversion structure, or the works appurtenant or accessory thereto, in conjunction with an improvement which in the judgment of the commission is desirable and justified in the public interest for the purpose of improving or developing a waterway or waterways for the use or benefit of interstate or foreign commerce, it may acquire the same by the exercise of the right of eminent domain in the district court of the United States for the district in which such land or other property may be located, or in the State courts. The practice and procedure in any action or proceeding for that purpose in the district court of the United States shall conform as nearly as may be with the practice and procedure in similar action or proceeding in the courts of the State where the property is situated: *Provided*, That United States district courts shall only have jurisdiction of cases when the amount claimed by the owner of the property to be condemned exceeds $3,000.

SEC. 22. That whenever the public interest requires or justifies the execution by the licensee of contracts for the sale and delivery of power for periods extending beyond the date of termination of the license, such contracts may be entered into upon the joint approval of the commission and of the public-service commission or other similar authority in the State in which the sale or delivery of power is made, or if sold or delivered in a State which has no such public-service commission, then upon the approval of the commission, and thereafter, in the event of failure to

issue a new license to the original licensee at the termination of the license, the United States or the new licensee, as the case may be, shall assume and fulfill all such contracts.

SEC. 23. That the provisions of this Act shall not be construed as affecting any permit or valid existing right of way heretofore granted, or as confirming or otherwise affecting any claim, or as affecting any authority heretofore given pursuant to law, but any person, association, corporation, State, or municipality, holding or possessing such permit, right of way, or authority may apply for a license hereunder, and upon such application the commission may issue to any such applicant a license in accordance with the provisions of this Act, and in such case the provisions of this Act shall apply to such applicant as a licensee hereunder: *Provided*, That when application is made for a license under this section for a project or projects already constructed, the fair value of said project or projects, determined as provided in this section, shall for the purposes of this Act and of said license be deemed to be the amount to be allowed as the net investment of the applicant in such project or projects as of the date of such license, or as of the date of such determination, if license has not been issued. Such fair value may, in the discretion of the commission, be determined by mutual agreement between the commission and the applicant or, in case they can not agree, jurisdiction is hereby conferred upon the district court of the United States in the district within which such project or projects may be located, upon the application of either party, to hear and determine the amount of such fair value.

That any person, association, corporation, State, or municipality intending to construct a dam or other project works across, along, over, or in any stream or part thereof, other than those defined herein as navigable waters, and over which Congress has jurisdiction under its authority to regulate commerce between foreign nations and among the several States, may in their discretion file declaration of such intention with the commission, whereupon the commission shall cause immediate investigation of such proposed

construction to be made, and if upon investigation it shall find that the interests of interstate or foreign commerce would be affected by such proposed construction, such, person, association, corporation, State, or municipality shall not proceed with such construction until it shall have applied for and shall have received a license under the provisions of this Act. If the commisison shall not so find, and if no public lands or reservations are affected, permission is hereby granted to construct such dam or other project works in such stream upon compliance with State laws.

SEC. 24. That any lands of the United States included in any proposed project under the provisions of this Act shall from the date of filing of application therefor be reserved from entry, location, or other disposal under the laws of the United States until otherwise directed by the commission or by Congress. Notice that such application has been made, together with the date of filing thereof and a description of the lands of the United States affected thereby, shall be filed in the local land office for the district in which such lands are located. Whenever the commission shall determine that the value of any lands of the United States so applied for, or heretofore or hereafter reserved or classified as power sites, will not be injured or destroyed for the purposes of power development by location, entry, or selection under the public-land laws, the Secretary of the Interior, upon notice of such determination, shall declare such lands open to location, entry, or selection, subject to and with a reservation of the right of the United States or its permittees or licensees to enter upon, occupy, and use any part or all of said lands necessary, in the judgment of the commission, for the purposes of this Act, which right shall be expressly reserved in every patent issued for such lands; and no claim or right to compensation shall accrue from the occupation or use of any of said lands for said purposes. The United States or any licensee for any such lands hereunder may enter thereupon for the purposes of this Act, upon payment of any damages to crops, buildings, or other improvements

caused thereby to the owner thereof, or upon giving a good and sufficient bond to the United States for the use and benefit of the owner to secure the payment of such damages as may be determined and fixed in an action brought upon the bond in a court of competent jurisdiction, said bond to be in the form prescribed by the commission: *Provided*, That locations, entries, selections, or filings heretofore made for lands reserved as water-power sites or in connection with water-power development or electrical transmission may proceed to approval or patent under and subject to the limitations and conditions in this section contained.

SEC. 25. That any licensee, or any person, who shall willfully fail or who shall refuse to comply with any of the provisions of this Act, or with any of the conditions made a part of any license issued hereunder, or with any subpœna of the commission, or with any regulation or lawful order of the commission, or of the Secretary of War, or of the Secretary of Commerce as to fishways, issued or made in accordance with the provisions of this Act, shall be deemed guilty of a misdemeanor, and on conviction thereof shall, in the discretion of the court, be punished by a fine of not exceeding $1,000, in addition to other penalties herein prescribed or provided by law; and every month any such licensee or any such person shall remain in default after written notice from the commission, or from the Secretary of War, or from the Secretary of Commerce, shall be deemed a new and separate offense punishable as aforesaid.

SEC. 26. That the Attorney General may, on request of the commission or of the Secretary of War, institute proceedings in equity in the district court of the United States in the district in which any project or part thereof is situated for the purpose of revoking for violation of its terms any permit or license issued hereunder, or for the purpose of remedying or correcting by injunction, mandamus, or other process any act of commission or omission in violation of the provisions of this Act or of any lawful regula-

tion or order promulgated hereunder. The district courts shall have jurisdiction over all of the above-mentioned proceedings and shall have power to issue and execute all necessary process and to make and enforce all writs, orders, and decrees to compel compliance with the lawful orders and regulations of the commission and of the Secretary of War, and to compel the performance of any condition imposed under the provisions of this Act. In the event a decree revoking a license is entered, the court is empowered to sell the whole or any part of the project or projects under license, to wind up the business of such licensee conducted in connection with such project or projects, to distribute the proceeds to the parties entitled to the same, and to make and enforce such further orders and decrees as equity and justice may require. At such sale or sales the vendee shall take the rights and privileges belonging to the licensee and shall perform the duties of such licensee and assume all outstanding obligations and liabilities of the licensee which the court may deem equitable in the premises; and at such sale or sales the United States may become a purchaser, but it shall not be required to pay a greater amount than it would be required to pay under the provisions of section 14 hereof at the termination of the license.

SEC. 27. That nothing herein contained shall be construed as affecting or intending to affect or in any way to interfere with the laws of the respective States relating to the control, appropriation, use, or distribution of water used in irrigation or for municipal or other uses, or any vested right acquired therein.

SEC. 28. That the right to alter, amend, or repeal this Act is hereby expressly reserved; but no such alteration, amendment, or repeal shall affect any license theretofore issued under the provisions of this Act, or the rights of any licensee thereunder.

SEC. 29. That all Acts or parts of Acts inconsistent with this Act are hereby repealed: *Provided*, That nothing herein contained shall be held or construed to modify or

repeal any of the provisions of the Act of Congress approved December 19, 1913, granting certain rights of way to the city and county of San Francisco, in the State of California: *Provided further*, That section 18 of an Act making appropriations for the construction, repair, and preservation of certain public works on rivers and harbors, and for other purposes, approved August 8, 1917, is hereby repealed.

SEC. 30. That the short title of this Act shall be "The Federal Water Power Act."

Approved, June 10, 1920.

[PUBLIC—No. 412—71ST CONGRESS]

[S. 3619]

An Act To reorganize the Federal Power Commission.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That sections 1 and 2 of the Federal Water Power Act are amended to read as follows:

"That a commission is hereby created and established, to be known as the Federal Power Commission (hereinafter referred to as the 'commission') which shall be composed of five commissioners who shall be appointed by the President, by and with the advice and consent of the Senate, one of whom shall be designated by the President as chairman and shall be the principal executive officer of the commission: *Provided,* That after the expiration of the original term of the commissioner so designated as chairman by the President, chairmen shall be elected by the commission itself, each chairman when so elected to act as such until the expiration of his term of office.

"The commissioners first appointed under this section, as amended, shall continue in office for terms of one, two, three, four, and five years, respectively, from the date this section, as amended, takes effect, the term of each to be designated by the President at the time of nomination. Their successors shall be appointed each for a term of five years from the date of the expiration of the term for which his predecessor was appointed, except that any person appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed only for the unexpired term of such predecessor. Not more than three of the commissioners shall be appointed from the same political party. No person in the employ of or holding any official relation to any licensee or to any person, firm, association, or corporation engaged in the generation, transmission, distribution, or sale of power, or owning stock or bonds thereof, or who is in any manner pecuniarily interested therein, shall enter

upon the duties of or hold the office of commissioner. Said commissioners shall not engage in any other business, vocation, or employment. No vacancy in the commission shall impair the right of the remaining commissioners to exercise all the powers of the commission. Three members of the commission shall constitute a quorum for the transaction of business, and the commission shall have an official seal of which judicial notice shall be taken. The commission shall annually elect a vice chairman to act in case of the absence or disability of the chairman or in case of a vacancy in the office of chairman.

"Each commissioner shall receive an annual salary of $10,000, together with necessary traveling and subsistence expenses, or per diem allowance in lieu thereof, within the limitations prescribed by law, while away from the seat of government upon official business.

"The principal office of the commission shall be in the District of Columbia, where its general sessions shall be held; but whenever the convenience of the public or of the parties may be promoted or delay or expense prevented thereby, the commission may hold special sessions in any part of the United States.

"SEC. 2. The commission shall have authority to appoint, prescribe the duties, and fix the salaries of, a secretary, a chief engineer, a general counsel, a solicitor, and a chief accountant; and may, subject to the civil service laws, appoint such other officers and employees as are necessary in the execution of its functions and fix their salaries in accordance with the Classification Act of 1923, as amended. The commission may request the President to detail an officer or officers from the Corps of Engineers, or other branches of the United States Army, to serve the commission as engineer officer or officers, or in any other capacity, in field work outside the seat of government, their duties to be prescribed by the commission; and such detail is hereby authorized. The President may also, at the request of the commission, detail, assign, or transfer to the commission engineers in or under the Departments of the Interior

or Agriculture for field work outside the seat of government under the direction of the commission.

"The commission may make such expenditures (including expenditures for rent and personal services at the seat of government and elsewhere, for law books, periodicals, and books of reference, and for printing and binding) as are necessary to execute its functions. Expenditures by the commission shall be allowed and paid upon the presentation of itemized vouchers therefor, approved by the chairman of the commission or by such other member or officer as may be authorized by the commission for that purpose."

SEC. 2. Subsection (c) of section 4 of the Federal Water Power Act is amended by adding at the end thereof the following new sentence: "Such report shall contain the names and show the compensation of the persons employed by the commission."

SEC. 3. Notwithstanding the provisions of section 1 of this Act the Federal Power Commission as constituted upon the date of the approval of this Act shall continue to function until the date of the reorganization of the commission pursuant to the provisions of such section. The commission shall be deemed to be reorganized upon such date as three of the commissioners appointed as provided in such section 1 have taken office, and no such commissioner shall be paid salary for any period prior to such date.

SEC. 4. This Act shall be held to reorganize the Federal Power Commission created by the Federal Water Power Act, and said Federal Water Power Act shall remain in full force and effect, as herein amended, and no regulations, actions, investigations, or other proceedings under the Federal Water Power Act existing or pending at the time of the approval of this Act shall abate or otherwise be affected by reasons of the provisions of this Act.

Approved, June 23, 1930.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1930.

No. 368.

THE SUSQUEHANNA POWER COMPANY,
APPELLANT,

vs.

STATE TAX COMMISSION OF MARYLAND.

APPEAL FROM THE COURT OF APPEALS OF MARYLAND.

MOTION OF APPELLEE TO DISMISS OR AFFIRM AND BRIEF IN SUPPORT THEREOF.

WM. P. LANE, JR.,
Attorney General of the State of Maryland,

WM. L. MARBURY, JR.,
Assistant Attorney General of the State of Maryland,

TYDINGS, LEVY & ARCHER,
CHARLES H. MACNABB,
Counsel for Appellee.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1930.

No. 368.

THE SUSQUEHANNA POWER COMPANY,
APPELLANT,

vs.

STATE TAX COMMISSION OF MARYLAND.

APPEAL FROM THE COURT OF APPEALS OF MARYLAND.

MOTION OF APPELLEE TO DISMISS OR AFFIRM.

Comes now the appellee in the above entitled cause, by its counsel of record, and moves that the appeal herein be dismissed or that the judgment of the Court of Appeals of Maryland be affirmed for the reason that the questions on which the decision in this case depends were not presented to and considered by the Courts below, do not present any substantial federal question, and are so unsubstantial as not to need further argument.

WM. P. LANE, JR.,
Attorney General of the State of Maryland,

WM. L. MARBURY, JR.,
Assistant Attorney General of the State of Maryland,

TYDINGS, LEVY & ARCHER,
CHARLES H. MACNABB,
Counsel for Appellee.

IN THE

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No. 368.

THE SUSQUEHANNA POWER COMPANY,
APPELLANT,

vs.

STATE TAX COMMISSION OF MARYLAND.

APPEAL FROM THE COURT OF APPEALS OF MARYLAND.

BRIEF IN SUPPORT OF MOTION TO DISMISS, OR AFFIRM.

A.

THE OPINION OF THE COURT BELOW.

The opinion of the Court of Appeals of Maryland was rendered on June 12th, 1930, and has not yet been officially reported. It is printed in the record (r. 324-345) and may be found in 151 Atl. 29.

B.

JURISDICTION.

The jurisdiction of this Court is sought to be rested upon 28 U. S. C., Section 344 (a), which is cited in full in the appellant's "Statement As To Jurisdiction On Appeal."

C.

STATEMENT OF THE CASE.

The appellant, acting pursuant to the powers conferred by its Charter (Laws of Maryland, 1908, ch. 268),

proceeded to acquire the entire bed of the Susquehanna River from tidewater to the Maryland-Pennsylvania State line. Some of this property was acquired by purchase, but at least one-half thereof was acquired by a single patent covering 2,012 acres of the bed of the river. That patent was obtained by the appellant from the State of Maryland on December 28th, 1923, upon the express representation (required by Section 48, Article 54 of the Code of Public General Laws, Bagby's Edition 1924), *that the river was not navigable* (r. 48-49). In 1926 the appellant applied for and obtained from the Federal Power Commission, created by the Federal Water Power Act (16 U. S. C., ch. 12), a license to erect a dam and power plant across the Susquehanna River about five miles above tidewater (r. 288). The appellant also applied for and obtained the approval of the Public Service Commissions of Maryland and Pennsylvania for its project (r. 287). Thereafter construction of the dam was commenced and practically completed prior to September, 1928.

Upon completion of this dam, the waters were backed up for a distance of fourteen miles, covering many acres of what had theretofore been fast land, on which there had been erected many structures of great value. Thus all of the property which had theretofore belonged to the Tidewater Canal Company extending along the west side of the Susquehanna River from the town of Wrightsville in Pennsylvania to Havre de Grace, in Maryland, was completely submerged, as was also the town of Conowingo. The dam is nearly a mile long, more than 100 feet in height, and when the plant is completed will, according to the appellants' witness, be *the largest power*

plant in the world (r. 98). This dam alone makes any talk of navigation of the Susquehanna River utterly futile.

On October 10th, 1929, the State Tax Commission of Maryland entered an order assessing the real estate and structures erected thereon of the appellant in Harford County, Maryland, consisting of a dam, equipment, and adjacent lands, at the sum of $12,023,633. Included in that assessment was the following item (r. 5): "2,110 acres (more or less) submerged land—$2,349,300."

On November 7th, 1929, the appellant, acting pursuant to Art. 81, Secs. 253 and 259 of the Code of Public General Laws of Maryland (Bagby's Ed. 1924), filed a petition in the Circuit Court for Harford County claiming "that such assessment of said 'submerged lands' or land forming part of the bed of said Susquehanna River, and flowage rights therein at said figure is illegal and erroneous" (r. 2), and praying that "the action of the State Tax Commission in so valuing and assessing said rights therein may be reversed and set aside" (r. 4). On November 29th, 1929, the Circuit Court for Harford County entered an order affirming the action of the State Tax Commission from which order an appeal was taken to the Court of Appeals of Maryland (r. 317). That court affirmed the judgment below, accompanying its action with an opinion delivered by Offutt, J., which contains in itself proof of the entire unsubstantiality of the present appeal (r. 324-345).

The assignments of error (r. 222-223), which are reiterated by the appellant in its "Statement of the Points to be Relied Upon" (r. 443-446), assert that the assessment which the Court of Appeals refused to disturb is

repugnant to the Constitution of the United States, (a) in that it deprives the appellant of property without due process of law contrary to the provisions of the 14th Amendment, and (b) in that it imposes a direct tax upon a federal instrumentality.

Due process was claimed to have been denied on the basis, (1) that the valuation of the "submerged lands" included a value attributable to the waters of the Susquehanna River flowing over said land; (2) that the valuation included a value attributable to a license obtained from the Federal Power Commission pursuant to the Federal Water Power Act, 16 U. S. C., c. 12; and (3) that the assessment of the appellant's real property was arrived at by a different method and upon a higher value than other property owned by other taxpayers on the same tax roll or located in the same taxing district (r. 222-223). The claim that the State is imposing a direct tax upon a federal instrumentality rests upon the contention that the Susquehanna River is a navigable stream, and that the appellant's project is subject to all of the provisions of the Federal Water Power Act, 16 U. S. C., ch. 12.

ARGUMENT.

SUMMARY.

I. The record does not show that the assessment upon the appellant's real property includes values attributable to the waters of the Susquehanna River or to a federal franchise; nor that the appellant's real property was assessed by a different method or upon a higher value than other similar properties owned by other taxpayers on the tax roll or located in the same taxing district; nor that the Susquehanna River is navigable.

II. Except for the claim of immunity as a federal instrumentality, the claims asserted in the assignments of error were not presented to or passed upon by the lower court.

III. The claim that the assessment is invalid in that it includes values attributable to the waters of the Susquehanna River and to a federal license, and the claim that the assessment is invalid for inequality are each equally unsubstantial.

IV. The claim of the appellant to immunity from taxation as a federal agency is wholly unsubstantial.

I.

The contentions made in the assignment of errors present no question for the consideration of this court for the reason that they are based upon assumptions of fact not supported by the record. All of the contentions involving the 14th Amendment are based upon the fundamental assumption that the assessment was excessive by reason of some erroneous method of valuation adopted by the State Tax Commission. But this assumption is not borne out by the record, as plainly appears from the following passage from the opinion of the Court of Appeals (r. 344):

> "But there is nothing in this case to permit the inference that the appellant was injured by the action of the Commission in valuing its property. The appellant did not itself offer any definite or positive valuation of its submerged lands. The evidence as to that value was largely that of warring experts who quoted figures endlessly in classifying various items of property as tangible or intangible in order

to increase or decrease the value of this or that item of the company's real or personal property; of local real estate experts as to the value of farm and forest lands in the neighborhood; testimony as to the cost of isolated parcels of the flooded area; as to the cost of the entire project, its capacity and earning power, and as to the physical characteristics and utility of the submerged lands. With such assistance as this evidence afforded the Commission was required to value appellant's submerged lands, and there is nothing in the record before us to enable us to say that its judgment was not fairly exercised, or that its conclusion was not correct."

(1) Thus there is not a syllable in the record to support the contention that the valuation of the submerged lands included a value attributable to the waters of the Susquehanna River flowing over said lands. It is true that there is language in the opinion of the Court of Appeals which strongly maintains the right of the State to assess the lands of the appellant at their *utility value as a power site.* We shall quote this language hereinafter. But there is nothing in the testimony or rulings of the State Tax Commission to show that any such theory was adopted by them.

(2) Likewise the record does not show that the State Tax Commission included in the valuation of the appellant's submerged lands a value attributable to the license issued by the Federal Power Commission. The exact ruling of the Commission on this point appears from its action on request for ruling No. 5 (r. 313, r. 316):

"5. Neither the Federal License nor the State franchise is the subject of assessment by the County Commissioners or State Tax Commission. So far, however, as the prayer may be held to assume that the property of the Power Company must be asses-

sed, at such value as it would have if there were no license or permission of the Federal or State Governments to use and operate the same as a power plant, the prayer is refused."

(3) Again the record does not show that the assessment of the submerged lands of the appellant was arrived at by a different method and upon a higher value than other real property owned by other taxpayers on the same tax roll or located in the same taxing district. On the contrary, the record shows that the following rulings were made by the State Tax Commission (r. 312-315):

"1. That the County Commissioners of Harford County and the State Tax Commission, in making or revising the assessment of the Susquehanna Power Company, in said County, were and are required to assess such real property as is subject to assessment and taxation in said County in the same manner as like property of individuals were or would be assessed.

"2. That in assessing the real estate of the Susquehanna Power Company in Harford County, which is subject to assessment and taxation therein, such assessment should not be made by a higher proportion of valuation than other real property on the same tax roll or located in the same taxing district, is assessed at."

And that the Commission adhered to these rulings was decided by the Court of Appeals upon a careful review of the evidence (r. 343):

"Nor can it be said as a matter of law that the assessment is erroneous. The Company itself supplied no information as to what the land actually cost it, but the Commission had before it a full itemized description of the entire project, its capacity and earning power, the testimony of the engineers for

> the County Commissioners and the Company as to its value, the amounts for which the property had formerly been assessed and some more or less meaningless testimony as to the value of farm land in the neighborhood. They were entitled to consider and weigh all of this information, and while they were not bound to accept all or any of it, at its face value, they were required in the light of it, as well as of all other pertinent facts known to them (fol. 522), to value the property according to their best judgment, and there is nothing in the record to show that they did anything less than that, or, that their valuation was unjust or oppressive."

Again, the contention that the appellant is immune from taxation as a federal instrumentality is based upon the assumption that the Susquehanna River is a navigable stream above tidewater. *There is no evidence whatsoever in this record to indicate that the Susquehanna River is or ever has been a navigable stream, above tidewater.* The Court of Appeals said (r. 329): (Italics ours.)

> "Whether the Susquehanna is in law or in fact navigable *is a question not presented by this record,* and not considered by this Court, and nothing in this opinion contained is to be construed as in any sense determining that question or determining the validity of any legislation relating thereto."

The fact that the appellant applied for and obtained a license from the Federal Power Commission on the assumption that the stream was navigable is more than counterbalanced by the fact that the appellant through its counsel obtained a patent from the State of Maryland *on the special certification that the river was not navigable* (r. 49). This certificate was a condition precedent to the obtaining of the patent inasmuch as Sec. 48 of Art. 54 of the Code (Acts 1862, Ch. 129, Sec. 39) expressly provides

that "no patent shall hereafter issue for land covered by navigable waters." In the lower courts the appellant conceded that the object of Chap. 268 of the Acts of 1908 of the General Assembly of Maryland *was to create navigation where none had previously existed.* See also the history of the Susquehanna Canal as set forth in the opinion of the Court of Appeals (r. 333-336), and see report of the War Department (H. R. Doc. 219, 58th Congress, 2nd Sess.). The case of *Havre de Grace v. Harlow,* 129 Md. 265, did not determine the navigability of the Susquehanna River above tidewater.

Again, the record is full of proofs in the shape of deeds, patents, etc., which are amply sufficient to estop the appellant from making any claim that it is not the owner of the "submerged lands" in question. Reference is made to the deed from Girard Trust Co. et al. to Frank J. Hoen (r. 29), and from Frank J. Hoen et al. to the appellant (r. 39). And see the patents obtained by counsel and assigned to the appellant under a special certification that "no part of the above land is covered by older or former surveys; *that no part of it is covered by navigable water,* and that there are no improvements whatever thereupon" (r. 49).

II.

Passing for the moment the question whether the assignments of error, in so far as they are rested upon the 14th Amendment, present any federal question, substantial or otherwise, we submit that an examination of the record will disclose that the claims now advanced were not made in the courts below nor considered by them in arriving at the judgment here sought to be reversed.

It is true that at the hearing before the State Tax Commission, a ruling was asked to the effect that:

> "Any assessment and taxation by said State or County of any part of said complete unit and project area or of said dam or pool or of the said canal, locks and other works with their profits and advantages, will deprive said company of its property against the law of the land under Art. 23 of the Declaration of Rights of Maryland, and without due process of law under the 14th Amendment of the Constitution of the United States" (r. 315)

and that this ruling was refused (r. 316). It is also true that the petition for appeal to the trial court assigned as one of the errors of law into which the State Tax Commission had fallen in making the assessment, the refusal of this, among other instructions (r. 3). It is manifest, however, that this request for a ruling did not present the question now sought to be raised by the assignments of error, but hinged upon the supposed illegality of *any* tax upon the property in question.

The theory of the appeal to the trial court as set forth in the petition was, first, that the real property in question was immune from state or county taxation as constituting an essential part of a federal instrumentality; and second, that the *valuation was excessive* because of the inclusion therein of the value of (a) federal and state franchises, (b) property outside of the State of Maryland, and (c) the waters of the Susquehanna River (r. 3). Nothing was said about the 14th Amendment. The opinion of the Court of Appeals is entirely barren of any suggestion that reliance was there placed upon the protection of the Federal Constitution except insofar as the doctrine of the immunity of federal instrumentalities

from state taxation was asserted. See statement by OFFUTT, J., of the questions to be decided (r. 329, 336).

As we understand it, the appellant *in its assignment of errors* does not attempt to maintain the position that any taxation of its submerged lands is contrary to the 14th Amendment, but merely complains of the improper inclusion of certain elements of value in the assessment placed upon those lands, and of the asserted inequality in the assessment as compared with that placed on other real estate within the same taxing district. While it was contended below that these elements of value were improperly included in the assessment of the appellant's submerged land, and that the method of assessment was erroneous and unjust, the contention does not appear to have been based upon any claim that the inclusion of these elements or the method of valuation pursued involved any violation of the 14th Amendment. (See Request for Ruling Nos. 3, 4, and 5) (r. 314-315).

Accordingly it is respectfully submitted that this Court will not consider the contentions now sought to be presented by the assignments of error insofar as these contentions are based upon the 14th Amendment, for the reason that these contentions were not presented to and considered by the lower courts.

Howard v. Fleming, 191 U. S. 126.
Home Ins. Co. v. Dick, 281 U. S. 397.

III.

The asserted federal questions based upon the 14th Amendment are wholly unsubstantial.

(1) If it be true that the State Tax Commission in valuing the submerged lands of the appellant, include a

value attributable to the waters of the Susquehanna River, it is perfectly clear that there is nothing in the Federal Constitution to prevent. That the submerged lands in question are property, taxable as such to the appellant as owner is clear from the following cases:

Browne v. Kennedy, 5 H. & J. (Md.) 196.
Central R. R. of N. J. v. Jersey City, 209 U. S. 473.
Leary v. Jersey City, 248 U. S. 328.

And there is a wealth of authority to the same effect.

Cooley, Taxation, 4th Ed., Vol. II, Sec. 449.

Indeed, Mr. Charles McHenry Howard, who represented the appellant in this litigation until the filing of the present appeal, made the following statement in argument before the State Tax Commission (r. 220):

> "What were the County Commissioners of Harford County called upon to do in the assessment proceedings that this is an appeal from? They were called upon to put a taxable value on certain tangible assets that we have. They were called upon to value and appraise a dam, a perfectly definite, a concrete object, as they say, without intending a pun —they were called upon to value a certain amount of land which forms the bed of our present pool, they were called upon to value a certain amount of outlying land that lies around the pool, some of which may be needed for the purposes of the pool, they were called upon to value these transmission lines— that is such part of all of this that was in Harford County—and they were called upon to value these structures, the power house that is built upon the dam, as well as the dam itself, as a structure. Now, those are tangible physical objects, all of them. In

valuing them, the County Commissioners and this Board is, of course, *entitled to take into consideration their utility for all kinds of purposes.*"

In their statement as to jurisdiction, present counsel for the appellant make the contention that the appellant does not own the submerged lands in question, and that the tax is therefore a tax upon the flow of a navigable stream which is not taxable in character. As has been seen, this contention is entirely unsupported by the record.

On the question of ownership the judgment of the Court of Appeals of Maryland must necessarily be conclusive. That Court said (r. 336):

> "That contention rests upon two fallacies, one, that the submerged land cannot be treated as property separate and apart from the water which flows over it, the other that the land and water together constitute a 'highway' and as such cannot be taxed.
>
> "Manifestly the land can be considered as a thing separate and distinct from the water over it, just as a bowl containing milk may be considered as separate and distinct from its contents, and both the bowl and the milk may be separately owned. That the bed of a navigable stream above tidewater may be the subject of private ownership was decided in this State as early as *Browne v. Kennedy*, 5 H. & J. 195."

The case of *U. S. v. Chandler-Dunbar Co.*, 229 U. S. 53, upon which appellant chiefly relies is clearly inapplicable. That case held that the United States did not have to compensate the company for loss of water power rights arising from the acquisition by the Secretary of War of submerged lands lying below a navigable stream. *The*

right of the company to compensation for the submerged lands themselves was not questioned, but it was held that *the right to develop water power* in a navigable stream being wholly subject to the will of Congress, was not a right of private property protected by the Fifth Amendment.

Indeed the case upon analysis is an authority which supports the action of the State Tax Commission in this case for the court expressly recognizes that the value of the company's property was to be determined *according to its utility value* (at pp. 78-79). See also the following language from the opinion of Mr. Justice LURTON (p. 69):

> "Whatever substantial private property rights exist in the flow of the stream must come from some right which that company has to construct and maintain such works in the river, such as dams, walls, dykes, etc., essential to the utilization of the power of the stream for commercial purposes."

The contention made by present counsel for the appellant was pointedly rejected by the Court of Appeals in the following language (r. 341):

> "The real value of these lands lies in the fact that they form a natural basis through which a large river flows and within a few miles falls nearly one hundred feet, and that by the erection of a dam across the only outlet from that basin, the waters of that river may be impounded so as to generate nearly six hundred thousand horse power. To say that its utility for that purpose adds nothing to the value of the land, or, what in effect is the same thing to say that the value created by that utility cannot be taxed because such a tax would be imposed upon flowing water simply ignores the facts."

(2) Even if it were conceded that the State Tax Commission included in the assessment of the appellant's property a value attributable to a federal license, there is nothing in the Constitution of the United States to prevent. Railroad property is assessed at its utility for railroad purposes, notwithstanding that utility depends upon the possession of a federal franchise.

Thompson v. Union Pacific Railroad Co., 9 Wall. 579.
Union Pacific Railroad Co. v. Peniston, 18 Wall. 5.
Central Pacific Railroad v. State of California, 162 U. S. 91.

The same priciple has been applied in cases even more closely analagous.

Balto. Shipbuilding & Dry Dock Co. v. Baltimore, 195 U. S. 375—Affirming 97 Md. 97.
Van Allen v. Assessors, 3 Wall. 573.
Educational Films Corp. v. Ward, decided Jan. 12, 1931.

The provision of Section 813 of the Federal Water Power Act, U. S. C. Title 16, Section 813, that "no value shall be claimed or allowed for the rights granted by the Commission, or by this chapter" manifestly relates to valuation for rate-making purposes, and surely does not prohibit the valuation of the property of the appellant as a going concern.

(3) Even more unsubstantial is the contention that the State Tax Commission violated the Federal Constitution by assessing the real property of the appellant by a dif-

ferent method and upon a higher value than other real property on the same tax roll, although located in the same taxing district. That no Federal question is involved apart from proof of intentional and systematic inequality of assessment has been repeatedly laid down by this Court.

Sunday Lake Iron Co. v. Wakefield, 247 U. S. 350.
Southern R. R. Co. v. Watts, 260 U. S. 521.
Chicago Great Western Railway Co. v. Kendall, 266 U. S. 94.

IV.

The claim of the appellant to immunity from state and county taxation is based solely on its contention that it is a federal agency and instrumentality. This contention in turn is based on the supposed application to the appellant's project of certain provisions of the Federal Water Power Act, 16 U. S. C., c. 12, specifically referred to in the appellant's statement as to jurisdiction.

This claim was made in the lower courts and disposed of on the assumption that the legislation in question was applicable to the appellant's project. But it is submitted that before this court will entertain an appeal based on any such contention, the fundamental fact must be established that the project in question is actually included within the ambit of the act. And this must depend in the last analysis upon whether the Susquehanna is navigable above tidewater.

Unless this Court is prepared to assume without proof the fact that the Susquehanna River is navigable above

tidewater, the bottom drops out of the appellant's claim to immunity. For manifestly the appellant cannot claim to be a federal agency unless it is performing a legitimate function of the Federal Government, and equally manifest is it, that the placing of an obstruction in a non-navigable stream for the purpose of utilizing the water power thus developed, is not a legitimate function of the Federal Government. The Attorney General of the United States has so held. See: *Opinion in re Application for License for Power Project near Cumberland Falls, Ky.* (July 1, 1930), and *Opinion in re Application for License by Appalachian Power Co. for Water Power Project in New River, Va.* (September 22, 1930). As pointed out in these opinions, the provisions of the Federal Water Power Act upon which the appellant places reliance are not applicable to obstructions placed in non-navigable streams, even though those streams are navigable at some point farther down in their course. As was noted by the Attorney General, this construction of the act is necessary in order to avoid raising questions as to whether Congress has not attempted to usurp the powers reserved to the States under the 10th Amendment.

On the other hand, if this court should conclude that the appellant, by accepting the license issued by the Federal Power Commission, has thereby become subject to its terms and to all the provisions of the Federal Water Power Act, it would nevertheless be quite clear that the appellant would not thereby become a federal agency or instrumentality, immune from taxation by the States. Otherwise the voluntary act of the appellant in submitting to the jurisdiction of the Federal Power Commission would immediately present the serious constitutional

questions which this court refused to entertain in *New Jersey v. Sargent*, 269 U. S. 328, even at the earnest request of a State.

Thus we find the appellant upon the horns of a dilemma. To assume the fact that its project has been erected in navigable waters, is to assume a fact for the purpose of invalidating the act of a State Legislature, through its agency, the State Tax Commission, which this court has consistently declined to do.

Wampler v. LeCompte, decided Dec. 8, 1930.
O'Gorman & Young v. Hartford, etc., Ins. Co., decided Jan. 5, 1931.

On the other hand, to assume the non-navigability of the stream is to eliminate the possibility of any such claim as is here made by the appellant, unless the Federal Water Power Act is to be construed in a manner plainly in conflict with the 10th Amendment, which again this Court will not do.

Russian Volunteer Fleet v. United States, decided Feb. 24, 1931.

Finally, it is abundantly evident that even if it be assumed that the Susquehanna River is navigable above tidewater, and that all of the provisions of the Federal Water Power Act are applicable to that project, and that the act so applied is a valid exercise of the power of Congress in the interests of navigation, (as to which see the argument on behalf of the State of New Jersey in *New Jersey v. Sargent* (supra)), nevertheless, the property of the appellant is not immune from state or county taxation. Article 31 of the very license upon which the ap-

pellant relies contains a complete refutation of its claim. It is therein provided that none of the project property will be "voluntarily sold, transferred, abandoned, or otherwise disposed of without the approval of the Commission, Provided, That a mortgage or trust deed or judicial sales made thereunder, *or tax sales,* shall not be deemed voluntary transfers within the meaning of this Article" (r. 310). And this provision of the license is taken directly from Section 801 of the Federal Water Power Act (16 U. S. C., c. 12). *So that any immunity created by the provisions of the Act has clearly been waived by Congress.*

Moreover since the passage of the Transportation Act of 1920, the railroads have been subject to recapture of excess earnings, *Dayton Goose Creek RR. v. U. S.*, 263 U. S. 456, and to other provisions equally as drastic as any provisions in the Federal Water Power Act, yet it will not be contended that the real property of railroad companies is immune from State taxation. Such a contention would be regarded as frivolous in the light of the decisions of this Court in,

Thompson v. Union Pacific RR. Co., 9 Wall. 579;
Union Pacific RR. Co. v. Peniston, 18 Wall. 5.
Central Pacific RR. v. California, 162 U. S. 91.

And there are other decisions of this Court which show that the contention advanced on this appeal that the appellant's property is immune from taxation, is equally frivolous.

Baltimore Shipbuilding & Dry Dock Co. v. Balto., 195 U. S. 375, Affirming 97 Md. 97.

Gromer v. Standard Dredging Co., 224 U. S. 362.
Fidelity & Deposit Co. v. Pennsylvania, 240 U. S. 319.
Choctaw O. & G. R. Co. v. Mackey, 256 U. S. 531.
Metcalf v. Mitchell, 269 U. S. 514.
Alward v. Johnson, Decided Feb. 24, 1931.

CONCLUSION.

There can be no doubt of the power of this Court to dismiss an appeal where the points relied upon are plainly frivolous or without any color of merit.

Corrigan v. Buckley, 271 U. S. 323.
Hannis Dist. Co. v. Baltimore, 216 U. S. 285.

Respectfully submitted,

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FILE COPY

MAR 1
CHARLES ELMO

IN THE

Supreme Court of the United States

OCTOBER TERM, 1930.

No. 368.

SUSQUEHANNA POWER COMPANY,
APPELLANT,

vs.

STATE TAX COMMISSION OF MARYLAND.

APPEAL FROM THE COURT OF APPEALS OF MARYLAND.

APPELLEE'S REPLY BRIEF.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1930.

No. 368.

THE SUSQUEHANNA POWER COMPANY,
APPELLANT,

vs.

STATE TAX COMMISSION OF MARYLAND.

APPEAL FROM THE COURT OF APPEALS OF MARYLAND.

APPELLEE'S REPLY BRIEF.

The contentions of the appellant, as set forth in the brief filed on its behalf, are predicated upon a misconception of the basic facts, as shown by the record, and a misapplication of well-established legal principles to the facts so misconceived.

In order to clarify the issues here presented, the arguments will be briefly analyzed and discussed in the order in which they are stated in the appellant's brief.

I.

Point 1 of the appellant's brief (pp. 29-30) may be paraphrased as follows:

Lands under navigable waters, submerged pursuant to authority from the United States, are not property, and therefore, the assessment thereof to the appellant is repugnant to the Fourteenth Amendment to the Constitution of the United States.

For the purpose of this reply brief only, the navigability of the Susquehanna River at the site of the appellant's power project will be assumed, but such assumption does not afford any basis for the construction which the appellant places upon decisions of this Court cited by it in support of its contentions.

It is elementary that the State's power of taxation of land is not limited to an absolute, unqualified, fee simple interest.

In the case of *Baltimore Shipbuilding and Drydock Company v. the Mayor and City Council of Baltimore*, 195 U. S. 375, this Court said (p. 381): "• • • it needs no argument to show that the state may do less. It may tax the life estate to one and the remainder to another, and sell only the interest of the party making the default. With regard to what the State of Maryland has done, and what are the purport and attempted effect of the tax in this case, we follow the Court of Appeals. That court treated the tax and the lien as going only to the Dock Company's interest in the land."

See also:

New Brunswick v. United States, 276 U. S. 547.
Shaw v. Gibson-Zahniser Oil Co., 276 U. S. 575.

That the interest of the owner of the bed of a navigable stream is such an interest as is subject to State taxation was expressly recognized by the cases of *Central Railroad v. Jersey City*, 209 U. S. 473, and *Leary v. Jersey City*, 248 U. S. 328.

Equally elementary is it that property may be taxed at its actual utility value. This proposition was recognized and applied by this Court in the *Chandler-Dunbar Case*, 229 U. S. 53 (at p. 77), so much relied upon by the appellant.

The assessment in this case represents an application of these well-known principles. Both the State Tax Commission and the Court of Appeals fully recognized that the appellant's title to the land in question was subject to the powers and rights of the United States, treating the tax as going only to the appellant's interest in the land, and asserting merely the right to tax that interest at its actual utility value (r. 337).

The appellant seeks to avoid the application of these well-settled principles by advancing the contention that when the federal government, in the exercise of its paramount authority over the navigable waters of the United States, appropriates the flow of the stream to the purpose of navigation, no taxable interest remains in the owner of the bed of the stream. In support of that contention, the appellant relies upon the decision of this Court in the *Chandler-Dunbar Case*.

Distinguishing the decisions in the *Jersey City Cases*, the appellant, while conceding that the land constituting the bed of a navigable stream is taxable prior to the

exertion by the federal government of its paramount authority, nevertheless maintains that the power to tax disappears when the federal government has acted, without regard to the nature of the action taken. In short, the appellant contends that lands, taxable to the appellant prior to the issuance of the license under the Federal Water Power Act, are now non-taxable notwithstanding these lands are now actually used in the generation of hydro-electric power, and are thus of immense value to the owner. Supporting this paradoxical claim, the appellant relies upon the fact that the license imposes conditions looking to the hypothetical navigation of the impounded waters *in futuro*.

The appellant admits that no authority can be found for its contention, but asserts that the *Chandler-Dunbar Case* went so far as to hold that the owner of the river bed "had no right to appropriate the current to his own commercial use" (appellant's brief, p. 39), but it is clear that that case held nothing of the kind.

The court merely held that no such right existed where Congress, pursuant to its power and control over navigation, exercised its paramount authority so as to preclude the use of the river bed for private commercial purposes; and that the exercise of the paramount rights of the federal government did not constitute a "taking" of property within the meaning of the Fifth Amendment to the federal Constitution. In other words, the *Chandler-Dunbar Case* holds that the owner of the bed of navigable waters of the United States has merely a qualified property therein subject to the paramount rights in the federal government for the purpose of navigation. In such

a case, Congress has the power to destroy the right of private use altogether; and if that should be done in this case, then the submerged land would have only a nominal value.

Congress also has the right to *regulate* the private use. If we assume that in this case the obtaining of the federal license and the assumption of jurisdiction by the Federal Water Power Commission were conditions precedent to the private use of the pool, then it may be further assumed that the terms of the license and the Federal Water Power Act constitute federal regulation of the private use; but that does not mean that such federal regulation has destroyed or affected the private use. In fact, in this case, the federal license *has expressly permitted* the private use.

The most that can be said is that the license has subjected such use to limitations imposed by the act of Congress, and it cannot be assumed that the State Tax Commission did not consider the powers of Congress, *in praesenti* as well as *in futuro*, and reflect the same in the value of the lands as fixed by it for the purposes of taxation.

There is no material difference between this case and that of an interstate bridge, constructed pursuant to a license granted by the federal government, over a navigable stream, and declared to be a public highway (post road) by act of Congress, which is subject to state taxation while under private ownership, although the federal government, in the interests of navigation, has the power

to cause its removal as an obstruction to navigation without compensation to the owner.

Henderson Bridge Co. v. Ky., 166 U. S. 150;
Keokuk and H. Bridge Co. v. Ill., 175 U. S. 626;
Pa. v. Wheeling and B. Bridge Co., 18 How. 421;
Union Bridge Co. v. U. S., 204 U. S. 364;
Philadelphia v. Stimson, 223 U. S. 605;
Gibson v. United States, 166 U. S. 269.

II.

In Point 2 the appellant contends, in effect, that in so far as the bed of the Susquehanna River at the site of its power project is valuable as an aid to navigation, it is not subject to taxation by the state, notwithstanding its utility for the private purposes of the owner, because such tax would be a burden upon the federal government in the exercise of its functions.

But the so-called submerged lands, the assessment of which is here complained of, constitute the bed of an artificial pool or reservoir. The appellant's brief seems to imply that the entire bed of the pool was submerged *before* the construction of the dam, but as a matter of fact, to a large extent, the bed of the pool consists of land which has been submerged *as a result of* the construction of the dam. On the east side of the river, it includes the property formerly belonging to the Proprietors of the Susquehanna Canal, which was incorporated by Chapter 23 of the Acts of 1783 (r. 333), all that part of the Columbia Branch of the Pennsylvania Rail-

road extending from the dam up the river for a distance of fourteen miles (r. 94-95), and the entire town of Conowingo (see photographs in back of appellant's brief), together with a large amount of waste and arable lands and riparian rights (r. 94). On the western shore it includes "The Tidewater Canal Company property" (incorporated by the General Assembly of Maryland, Acts of 1825, Chapter 180), which extends from the dam for a distance of fourteen miles up the river, together with "all and singular its berme, bed, towpath, to its utmost easterly verge, improvements, structures, locks, lock houses and appurtenances thereto, basins, wharves, abutments, dams, acqueducts, water rights, privileges, easements, appurtenances and rights usable or capable of use in connection therewith" (r. 43). It also includes the former beds of state and county roads, bridges, etc. (r. 96 and photographs in the back of appellant's brief). The record also shows that, *to clear the flooded area of trees, cost the appellant $96,053.00* (r. 96-97).

It might also be supposed, from certain statements in the appellant's brief, that the flooding of the submerged lands was not essential to the development of hydroelectric power, but was imposed upon the appellant by the Federal Power Commission in the interests of navigation. Nothing could be further from the fact. The testimony of the appellant's own witnesses demonstrates that these submerged lands, which form the bed of an artificial pool, are an indispensable adjunct to the operation of the power project (r. 341), from which the appellant derives a guaranteed net return of seven per cent. on more than $45,000,000 (r. 89-274).

The appellant maintains that notwithstanding the manifest value of these submerged lands as an essential part of an enormous power plant, this value may not be taxed because the lands are used by the appellant as a federal instrumentality in the interest of navigation. In order to sustain this contention, much stress is laid upon the language of the license issued by the Federal Power Commission.

It is unnecessary to repeat here the argument made in the Brief In Support Of The Motion To Dismiss Or Affirm heretofore filed. The cases there cited show clearly that even if it be assumed that all the provisions of the Federal Water Power Act are applicable to the appellant's project, yet it is no more an instrumentality of the federal government than an interstate railroad, an interstate bridge or a carrier of the mails. The property sought to be taxed is owned, not by the government itself, but by a private agency using or operating the same for its own profit. As has been pointed out in *Clallam County v. United States*, 263 U. S. 341, 345, there is a vast distinction between property owned by the United States and operated solely for its purposes, and property owned by a private agency "interested in profit on its own account." Just as a vessel which carries coal destined for the use of the United States may be taxed to the owner thereof (*Ackerlind v. United States*, 240 U. S. 531), so may land, which supports navigable waters, be taxed to the appellant.

Moreover, the appellant in its brief utterly fails to indicate in what manner the tax here complained of imposes a burden on any function of the federal govern-

ment. A recent decision of this Court (*Willcutts v. Bunn*, 282 U. S. 216) shows that the duty of establishing the existence of such a burden rests upon the complaining taxpayer.

In this case where is any burden shown?

It is interesting to note that, by virtue of the terms of the lease between the appellant and the Philadelphia Electric Company, the taxes are borne by the consumers of electrical energy (r. 263).

III.

Appellant's Point 3 is that the utility of the lands in question for power purposes cannot be taken into consideration in assessing such lands for purposes of taxation.

In support of that contention the appellant throughout its brief has emphasized the fact that so much of the land as constituted the bed of the Susquehanna River prior to the erection of the dam was assessed at a nominal amount, and the remainder at not more than adjoining farm lands, and much complaint is made of the sudden increase in assessment.

That the value now placed upon the appellant's real property is not excessive appears from the appellant's own statement made before the Public Service Commission of Pennsylvania. At that time an expert witness for the appellant testified that the lands constituting the bed of the appellant's pool had a value of approximately $21,000,000 (r. 153). This great value is obviously due to the fact that these lands are "integrated * * * in a

single unit which can be and is utilized to produce an enormously valuable water power" (Opinion of OFFUTT, J., r. 341).

The fact that the lands heretofore might have been assessed without regard to this utility could of course furnish no ground of objection to the present assessment. Moreover, there is no reason to suppose that the taxing authorities did not exercise their best judgment in each case. As was pointed out by this court in the *Chandler-Dunbar Case*, 229 U. S. 52, at page 77, the "prospective value" of these lands for the purpose of a power site "had passed beyond the region of the purely conjectural or speculative." Their use for this purpose was not only an "immediate probability" but was an actuality.

Moreover, this court does not sit as a board of review of tax assessments, and under the authorities cited in the Brief In Support Of The Motion To Dismiss Or Affirm, heretofore filed, no federal question is involved in the absence of proof of intentional and systematic inequality.

Respectfully submitted,

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CORRECTED COPY

SUPREME COURT OF THE UNITED STATES.

No. 368.—October Term, 1930.

The Susquehanna Power Company, Appellant, *vs.* State Tax Commission of Maryland. } Appeal from the Court of Appeals of the State of Maryland.

[April 13, 1931.]

Mr. Justice Stone delivered the opinion of the Court.

This case is here on appeal, § 237 Jud. Code, as amended by the Act of January 31, 1928, from a judgment of the Court of Appeals of Maryland, — Md. —, 151 Atl. 29, which upheld an order of appellee, the State Tax Commission, assessing 2110 acres of appellant's submerged lands, for 1929 taxation, at $2,349,300.

Appellant is a licensee of the Federal Power Commission, created under the Act of June 10, 1920, c. 285, 41 Stat. 1063. Acting under the license, it has constructed a dam across the Susquehanna River which, for present purposes, we assume to be navigable, and has established an adjacent power plant at a point within the State. As a part of the power project, it acquired by purchase from private owners, and by grant from the state, large areas of land, including the bed of the river and adjoining upland. On completion of the dam, the waters of the Susquehanna were backed up, forming a pool about fourteen miles in length, and submerging a large area formerly upland, including a town site, and land previously occupied and used as a canal. The lands assessed by appellee lie under the pool created by appellant's dam, and are used, and derive their chief value, as a part of the power project.

In the present suit, brought to review the order of the Commission fixing the assessment, appellant assailed its action, taken under Laws of Maryland, 1914, c. 841; Bagby, Ann. Code (1924), Art. 81, § 249 (2), directing assessment of property for taxation, as in conflict with the federal Constitution. Appellant urges, as prin-

cipal grounds for reversal, first, that in constructing and operating its power plant under the federal license, it, and its lands and property used in the power project, are agencies or instrumentalities of the federal government, state taxation of which is impliedly prohibited by the Constitution, and, second, that in assessing the lands for taxation, appellee has assigned to them a value attributable to appellant's license, likewise immune from taxation, and to the river waters, not appellant's property, in violation of the due process clause of the Fourteenth Amendment.

1. The Federal Power Commission is authorized to grant to licensees permission to construct dams on navigable waterways, and to make use of surplus water not necessary for navigation. Act of June 10, 1920, *supra*. The Act contemplates the use of such surplus water in the development of power, and, for that purpose, the construction and operation of works and transmission lines. See *Ford & Son* v. *Little Falls Co.*, 280 U. S. 369. It provides (§ 14) that after the expiration of a license, the government shall have the right to take over and operate the licensed project upon payment of just compensation as defined by the Act. The Commission is given extensive regulatory and supervisory powers over the construction, maintenance, operation, financing, rates, and service of licensed projects, and over the system of accounting maintained by licensees. The Act does not deal directly with state taxation, but § 8, forbidding voluntary transfers of licenses, provides that "tax sales shall not be deemed voluntary transfers. . . ."

Appellant is a business corporation, operating its power plant for profit. The challenged tax is imposed, not on the license, but on the private property of the licensee used in its business. Lands privately owned are subject to state taxation although lying under navigable waters, *Central R. R. Co.* v. *Jersey City*, 209 U. S. 473; *Leary* v. *Jersey City*, 248 U. S. 328, as is private property in which the federal government may have an interest, *Baltimore Shipbuilding & Dry Dock Co.* v. *Baltimore*, 195 U. S. 375; *New Brunswick* v. *United States*, 276 U. S. 547; *Shaw* v. *Oil Co.*, 276 U. S. 575, or which is subject to its control in the exercise of its power over navigable waters. *Henderson Bridge Co.* v. *Kentucky*, 166 U. S. 150; *Keokuk & Hamilton Bridge Co.* v. *Illinois*, 175 U. S. 626. Hence, the present lands are subject to the taxing power of the

state unless they are to be regarded as instrumentalities of the federal government because of their use as a part of the project which it has licensed.

Assuming, for present purposes, that the license of the Power Commission is a federal instrumentality, immune from taxation or other direct interference by the state, it does not follow that the property appellant uses in its power project is clothed with that immunity. The exemption of an instrumentality of one government from taxation by the other must be given such a practical construction as will not unduly impair the taxing power of the one or the appropriate exercise of its functions by the other. *Metcalf & Eddy* v. *Mitchell*, 269 U. S. 514, 523, 524.

With that end in view, the distinction has long been taken between a privilege or franchise granted by the government to a private corporation in order to effect some governmental purpose, and the property employed by the grantee in the exercise of the privilege, but for private business advantage. The distinction was pointed out by Chief Justice Marshall in *McCulloch* v. *Maryland*, 4 Wheat. 316, 436, and in *Osborn* v. *The Bank*, 9 Wheat, 738, 867; see *Railroad Co.* v. *Peniston*, 18 Wall. 5, 34-37. It has been followed without departure, and property so owned and used has uniformly been held to be subject to state taxation. *Thomson* v. *Pacific Railroad*, 9 Wall. 579; *Central Pacific R. R. Co.* v. *California*, 162 U. S. 91; *Railroad Co.* v. *Peniston, supra; Baltimore Shipbuilding & Dry Dock Co.* v. *Baltimore, supra; Gromer* v. *Standard Dredging Co.*, 224 U. S. 362; *Ackerlind* v. *United States*, 240 U. S. 531; *Alward* v. *Johnson*, — U. S. —, decided February 24, 1931; see *Choctaw, O. & G. R. R. Co.* v. *Mackey*, 256 U. S. 531; *Group No. 1 Oil Corp.* v. *Bass*, — U. S. —, decided this day.

The present case is not only controlled by the earlier decisions of this Court, but it would be difficult to suppose any case in which the adverse effect of a tax upon a governmental purpose would be more remote or attenuated, or in which the asserted immunity would more seriously impair the sovereign power of the state to tax, than in this one.

Appellant is not aided by *Long* v. *Rockwood*, 277 U. S. 142, on which it chiefly relies. It was there held that royalties derived from a patent granted upon an invention by the federal government could not be taxed by a state. But there would be no war-

rant for extending such immunity to property of the patentee used to manufacture the patented article, and only a comparable extension would justify the immunity claimed here for appellant's lands because used as a part of its licensed power project.

2. No basis is laid in the present record for assailing the tax on constitutional grounds, either because the Commission has placed a higher value on appellant's lands than on others having a similar location and use, or because it has directly taxed appellant's license. The contention urged is that the lands are assessed at a higher value than they were before they were submerged, and higher than farm uplands in the neighborhood, and that since their use as a part of appellant's power project is rendered possible only by the federal license and by the water in the river, the assessment at the higher value, in effect, involves a forbidden tax on the license, and taxation of appellant for the value of the waters of a navigable stream.

Accepting, as we must on this record, the valuation of the Commission as neither excessive nor discriminatory, we can perceive no basis, either legal or economic, for relieving appellant from the burden of the tax by attempting the segregation of a part of that value and attributing it to independent legal interests, not subject to taxation, because those interests have a favorable influence on the value of the property.

An important element in the value of land is the use to which it may be put. That may vary with its location and its relationship to the property or legal interests of others. See *Manufacturing Co.* v. *Gilford*, 64 N. H. 337. Its proximity to means of transportation, highways, railroads or tidewater, see *New York, L. E. & W. R. R. Co.* v. *Yard*, 43 N. J. L. 632; *Trask* v. *Carragan*, 37 N. J. L. 264; cf. *Hersey* v. *Barron County*, 37 Wisc. 75; or its location in the vicinity of water power belonging to another but available for use upon it, *State* v. *Flavell*, 24 N. J. L. 370, may increase its utility and hence its taxable value. A dock on New York harbor may have a greater value than one on non-navigable waters, cf. *Leary* v. *Jersey City, supra; Central R. R. Co.* v. *Jersey City, supra*, even though the advantages of the former may be terminated through the exercise of the superior power of the federal government over navigable waters, see *United States* v. *Chandler-Dunbar Co.*, 229 U. S. 53.

A large part of the value of property in civilized communities has been built up by its inter-related uses; but it is a value ultimately reflected in earning capacity and the price at which the property may be sold, and hence is an element to which weight may appropriately be given in determining its taxable value. It has never been thought that the taxation of such property at its enhanced value is in effect taxation of its owner for the property of others. Nor can we say that the present tax, based upon what must be taken to be the fair value of appellant's lands profitably used in the business of developing and selling power, is forbidden because that use would not have been possible without the control which appellant has acquired over navigable waters through the grant of its license. Those considerations which lead to the recognition of the power of a state to tax the property used by the grantee in the enjoyment of a federal license require recognition of the power to tax it on the basis of accepted standards of value, customarily applied in the taxation of other forms of property. See *Railroad Co.* v. *Peniston, supra.*

We have examined other objections to the tax, made in brief and argument; but we do not discuss them, as they are unsubstantial, and as objections ~~to them~~ on federal grounds, were not presented by the record or passed upon by the state court.

Affirmed.

A true copy.

Test:

Clerk, Supreme Court, U. S.